THE ORATOR IN ACTION AND THEORY IN GREECE AND ROME

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Contents

Preface vii

Bibliography of George Kennedy ix

I. THE ORATOR IN THEORY

1. How Good Should an Orator Be? 3
   Øivind Andersen *University of Oslo*

2. What the Laws Have Prejudged: *Παραγραφή* and Early Issue Theory 17
   Edwin Carawan *Southwest Missouri State University*

II. THE ORATOR IN ACTION: GREECE

3. The Superfluous Bag: Rhetoric and Display in the *Histories* of Herodotus 55
   Sheila Murnaghan *University of Pennsylvania*

4. Rhetoric, Art, and Myth: Isocrates and Busiris 73
   Terry L. Papillon *Virginia Polytechnic Institute*

III. THE ORATOR IN ACTION: ROME

5. Julius Caesar, The Orator of Paradox 97
   A.D. Leeman *University of Amsterdam*

6. Shifting Charge and Shifty Argument in Cicero's Speech for Sestius 111
   Christopher Craig *University of Tennessee*

7. Cicero's *Pro Milone:* An Ideal Speech of an Ideal Orator 123
   James M. May *St. Olaf College*

IV. THE ORATOR IN THE EMPIRE

8. Returning to Tacitus' *Dialogus* 137
   Michael Winterbottom *Oxford University*

9. Figured Speeches: 'Dionysius,' *Art of Rhetoric* VIII–IX 156
D.A. Russell *Oxford University*

General Index 169

Index Locorum 171

Preface

These essays were written by friends of George Kennedy, many of whom were also his students. Most of them were delivered at a colloquium in his honor held in Chapel Hill, North Carolina during October of 1998. They are quite diverse, both in subject-matter and in audience envisioned. This seems quite appropriate. George Kennedy's own scholarly work covers an enormous range of topics and is directed at many different audiences, as is clear from the list of his publications that follows. It seems only apt, therefore, that a volume in his honor should do the same. We have all profited from his tremendous erudition and generosity, and this volume is an attempt, if not to repay, at least to acknowledge, our debt to him. Therefore, it is with gratitude and appreciation that we dedicate this book to George Alexander Kennedy.

I would like to thank the contributors for their cooperation and promptness, which made my task much easier, and the anonymous reader, who gave many helpful suggestions. I would also like to thank Bill Race for proofreading the Greek. In particular, I want to express my appreciation to Niko Endres, who gave me enormous and invaluable help in editing the manuscript.

Cecil W. Wooten
University of North Carolina
at Chapel Hill

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I
The Orator in Theory

CHAPTER 1

How Good Should an Orator Be?

by Øivind Andersen

What, if anything, does mastery of oratory, as advertised and displayed by an orator, and as perceived and appreciated by an audience, contribute to the success of a speaker and of his case? Does it help him or does it jeopardize his success if he claims to be good and displays his skills? Obviously, this is a very general question that can not be answered for all times and circumstances, but it may be posed for all genres of oratory and for all contexts. My intention in this paper is to point to some trends and tensions in ancient rhetorical theory and practice in regard to this question.

It certainly is the case, as Stephen Halliwell points out, that there is an ambiguity in Athenian reactions to rhetoric:

> the intensity of the Athenian culture of rhetoric rested on no blind or uncritical commitment. On the contrary, it constituted an intrinsically and self-consciously ambiguous sphere of experience, in which an appetite for an appreciation of the formal spoken word sat uneasily alongside a suspicion of its possible artifices, snares, and partialities.[1]

Suspicion of rhetoric is very much in evidence, not only, for example, in comedy and tragedy, but in speeches as well, both in those given by orators and in reported and fictitious speeches in the historians and other literature. Many speakers make a distinction between the people at large and those who speak (οἱ λέγοντες, ῥήτορες, πολιτευόμενοι) and, in particular,

[1] "Between Public and Private: Tragedy and Athenian Experience of Rhetoric," in *Greek Tragedy and the Historian*, ed. Christopher Pelling (Oxford, 1997), 121.

disparage their opponents as skilled and unscrupulous orators, although they themselves are speakers.[2]

A speaker, especially in court, often seeks to alleviate and counteract suspicion by an explicit disclaimer of eloquence. Thus, it is hoped that the audience will not be on its guard and will be more receptive to what the speaker has to say. The opening of Plato's *Apology of Socrates*, for example, contains the most famous *captatio benevolentiae* in ancient rhetoric. Its main component is the so-called *Bescheidenheitstopos*, or *topos* of modesty, with regard to the oratorical abilities of the speaker.[3] Socrates strengthens his point by explicitly contrasting his own modest ability with the dazzling eloquence of his accusers, to which the audience has just been subjected. It is interesting to note, however, that Socrates' accusers had tried to make the audience suspicious of him by warning them against his oratorical skills: Socrates, they claim, is a "formidable speaker" (δεινὸς λέγειν).[4] Socrates himself protests that he is actually not very good at speaking, as, he says, the audience will soon realize: He will speak truthfully and not in embroidered and stylized phrases, expressing himself at random and in the first words that come to his mind. It would not be fitting, he argues, at his age to toy with words. He will use the same kind of language that he is accustomed to use around town. Since this is his first experience in a law-court, he says, he is simply a stranger to the manner of speaking there. Thus, he begs the audience to excuse him just as they would excuse a real stranger who spoke in the dialect and manner used in his own country. He

[2] References and discussion can be found in Kenneth J. Dover, *Greek Popular Morality in the Time of Plato and Aristotle* (Oxford, 1974), 23–25. See also, for example, Dem. 58.61 and 23.4–5. Dover also shows that the assembly and juries are sometimes warned against deception by dishonest arguments and criticized for allowing themselves to be deceived even by speakers who have little talent. For a fuller and more recent discussion of Athenian suspicion of rhetoric, see Josiah Ober, *Mass and Elite in Democratic Athens* (Princeton, 1989), 165–77.

[3] For the history and ramifications of this *topos* in rhetoric and literature, see *Historisches Wörterbuch der Rhetorik*, ed. Gert Ueding (Tübingen, 1992-), s.v. "Bescheidenheitstopos." There is, however, a need for a new study of this phenomenon within the context of ancient rhetoric.

[4] The idea of δεινότης and the "ideal" of δεινὸς λέγειν reflect Greek ambiguity about clever speaking. Δεινὸς λέγειν is mostly used negatively and is associated with artifice and trickery; see, for example, Thuc. 8.68.1 (and below); Antiphon 5.5; Lys. 12.86, 14.38, 30.24; Isoc., *Against Euthy.* 5; Din. 1.113; Aeschin. 3.215; and Dem. 22.66. However, it is sometimes used in a positive sense; see, for example, Plato, *Men.* 95c on Gorgias and the discussion toward the end of this paper.

pleads with the jury to concentrate on the truth of what he will say, not on his inadequate manner of saying it.

Such an appeal, with its explicit self-deprecation, was supposed to be rhetorically effective.[5] Quintilian (*Inst.* 4.1.8–9) explains why:

> we shall derive some silent support from representing that we are weak, unprepared, and no match for the powerful talents arrayed against us. . . . For men have a natural prejudice in favour of those who are struggling against difficulties, and a scrupulous judge is always specially ready to listen to an advocate whom he does not suspect to have designs on his integrity.[6]

Quintilian also makes the point that it may be useful to speak of our opponent in honorific terms, "pretending to fear his eloquence and influence with a view to rendering them suspect to the judge" (4.1.11).[7]

There must have been a time in Greek history, sometime during the fifth century B.C., when it made sense for a man speaking in public to claim that he was simply unfamiliar with the "new," or "technical," way of speaking and to stress perhaps that he would be at a disadvantage in comparison with some other party more versed in rhetoric and more clever with words. Even the words of Socrates—though not of Plato—might perhaps have been taken at face value in 399 B.C. On the other hand, of course, the modesty displayed in the *Apology of Socrates* has the additional quality of being very much in character, since it appears as a kind of Socratic irony. Where did one ever hear a more eloquent apology and a more eloquent disclaimer of eloquence?

Socrates must not have been the only man who had to appear before a tribunal only once in his lifetime. Even in fourth-century Athens it may

[5] For its use, see, for example, Lys. 12.3, 17.1, 19.1; Isaeus 10.1; Dem. 48.1, 52.2, 58.3; Isoc., *Ant.* 4–6. We see a similar idea in Latin oratory in Cicero, *Arch.* 2.3 and *Quinct.* 1. For cases when an experienced opponent is charged with δεινότης, see Isaeus 9.35 and Dem. 18.277 and 35.40–43, as well as Dem. 22.4, where the word δεινός is not used but Androtion is discredited as being a τεχνίτης τοῦ λέγειν. Likewise, Aischines calls Demosthenes a τεχνίτης λόγων (1.170).

[6] All translations, unless otherwise noted, come from the Loeb Classical Library.

[7] The peculiar device of declaring oneself incompetent and at a loss is not mentioned as a way of securing good-will from our own person in the *Rhetorica ad Alexandrum* (34), although there is advice on how to defend oneself against charges of having studied rhetoric (λέγειν μανθάνειν καὶ μελετᾶν; 36). Nor is it mentioned in Aristotle, *Rhet.* 3.14, or in Cicero, *Inv.* 1.22 or *De or.* 2.321. In the *Rhetorica ad Herennium* 1.8, the word *inopia* may perhaps indicate also a lack of rhetorical ability.

have happened that an unprepared, inexperienced, or incompetent person would have had to speak in public and that he would have asked indulgence for his lack of oratorical skill.[8] Such a person might very well be unaccustomed to speaking in court, even though he might perhaps not be wholly unfamiliar with the ways and workings of a jury. The Aristodemus of Demosthenes 44 is young and inexperienced. His father, who is an old man, has had no dealings with the law. We should, consequently, believe them if they claim to feel uncomfortable in court.[9] However, Demosthenes also (21.141–42) trusted that the jury would be aware that the claim that one could not speak properly (*μὴ δύνασθαι λέγειν*) was often only an excuse that people used to justify their failure to defend themselves in court. So, we do find cases in which the argument that one was not good at speaking may be said to have been used honestly; and, if it was used to rationalize a failure, we may assume that there was at least sometimes a correspondence between the alleged lack of competence and lack of success.

But protestations of incompetence surely ceased eventually to be credible, if, indeed, they ever were at all. They strike a strange note in the Attic orators and in the speeches of professional logographers. When it comes to disclaimers of rhetorical skill, we are essentially dealing with a conventional fiction.[10] But even so it seems that it was worthwhile to pretend. The paradoxical fact is that it obviously made sense to deprecate oneself even in circumstances where nobody would dream of taking such protestations at face value. Indeed, in many cases, as in the *Apology of Socrates*, the elegant form and the confident mood of the disclaimer of rhetoric itself implicitly belies the explicit message of modesty; the disclaimer of art becomes a display of art. Communication between speaker and audience entails duplicity on the part of the speaker and suspension of disbelief on the part of the audience: The message is properly received and the self-deprecation properly appreciated only if it is seen through, if it is accepted as a device. As Josiah Ober points out, "The very transparency of the fiction is indicative of its importance to the participants and reveals the deep distrust of rhetoric which coexisted with the aesthetic appreciation the jurors felt for a well-composed oration." [11] The way the *topos* is deployed and devel-

[8] A case in point is the Phormio of Dem. 36. He was an elderly manumitted slave of barbarian stock. Since he was extremely ill equipped to speak, a friend speaks for him.

[9] To be young, or old, however, is not always a recommendation, since the fact that one has never spoken before may be used against him, "as in that case he is supposed to have some special private reason for speaking contrary to his custom" (*Rhet. ad Alex.* 29).

[10] See Ober, *Mass and Elite*, 174–77.

[11] Ibid., 175.

oped contributes to the audience's adequate recognition of the speaker's ability. If it is cleverly executed, the audience assumes: This is an able and competent speaker; we are in good hands and may expect to enjoy ourselves.

There is another way of trying to convey to an audience the impression that one is not a skilled speaker, and that is by simply appearing to speak somewhat incompetently and inelegantly, without conceit or scheming, in other words, to conceal one's eloquence.[12] While the device of deprecating one's own speaking ability is more evident in rhetorical practice than in theory, the ancient rhetoricians give lots of advice about this second approach, which, by its very nature, is more difficult to point out in the orators. The principle is first discussed by Aristotle with reference to the two somewhat conflicting claims of appropriateness and unfamiliarity in creating a *lexis* that commands admiration. Rhetorical language should be elevated, but not conspicuous:

> As a result, authors should compose without being noticed and should seem to speak not artificially but naturally. (The latter is persuasive, the former the opposite; for [if artifice is obvious] people become resentful, as at someone plotting against them, just as they are at those adulterating wines.)[13]

In the rhetoricians we see this general advice applied to various parts of the model speech.

For instance, in the exordium, to avoid arousing any suspicion, the speaker should refrain from any elaboration, "since any art that the orator may employ at this point seems to be directed solely at the judge" (Quint., *Inst.* 4.1.56). Moreover:

> The style of the exordium . . . should seem simple and unpremeditated, while neither our words nor our looks should promise too much. For a method of pleading which conceals its art and makes no

[12] For a more extensive discussion of this approach, see my "Lingua suspecta. On concealing and displaying the art of rhetoric," *Symbolae Osloenses* 71 (1996), 68–86.

[13] Arist., *On Rhetoric* 3.2.4, trans. George Kennedy (Oxford, 1991). A more sinister comparison may be made with drugs. Thus, for Ps.-Dion. in his *Exetasis*, τέχνη is specifically the doctor's skill of "hiding the knife and administering the drug in pleasing food"; see D.A. Russell, "Classicizing Rhetoric and Criticism: The Pseudo-Dionysian *Exetasis* and Mistakes in Declamation," in *Le Classicisme à Rome aux Iers siècles avant et après J.-C.*, Entretiens Hardt, ed. H. Flashar, no. 25 (Geneva, 1979), 126. For remarks on concealment and apparent spontaneity, see *Rhet. Her.* 2.47, 4.10, 4.32; Cic., *Orat.* 76, 145, 170, 208–9; Quint., *Inst.* 9.4.17, 10.1.20, 11.2.126, 12.9.3–5; Dion. Hal., *Lys.* 3, 8; Schol. Dem. 1.1.

> vain display . . . will often be best adapted to insinuate its way into the minds of the hearers. (4.1.60)[14]

The *Rhetorica ad Herennium* teaches that "we must make sure that our style is temperate and that the words are in current use, so that the discourse seems unprepared" (1.11). Consequently, the most attractive form of exordium, according to Quintilian (*Inst.* 4.1.54), is one that draws it material from the opponent's speech, since it thus appears to have been devised on the spur of the moment. One should note, however, that the exordium is not, therefore, to be less impressive, for Quintilian goes on to say in this same passage that "the fact of its not having been composed at home . . . increases the orator's reputation for natural talent by the readiness with which it is produced and carries conviction owing to the simple and ordinary language in which it is clothed." Similarly, Cicero, in his *De inventione* (1.25), admits that someone who defends himself against accusers in court "may express doubt as to what to say first, or which passage to answer before all others, and show perplexity and astonishment," but he does not assume that the speaker goes on to speak in a perplexed manner. On the contrary, the point is that a man will prove himself capable of speaking well even though he is at first dumbfounded: "For when the audience see that he whom [*sic*] they think is shaken by the opponent's speech is ready to speak in reply with confidence and assurance, they generally think that they have assented too readily [to the speech of the opponent] rather than that he is confident without a good cause." Thus, we see that even though the speaker may have been taken by surprise and may have thus been forced to extemporize, he should still be able to evoke admiration for himself.

Apparent artlessness is most important at the beginning of a speech, but it can be significant elsewhere as well. In the narration, for example, anything suggestive of artful design should be avoided; nothing should seem fictitious or too elaborate.[15] When in the enumeration the speaker announces by number how many points he is going to discuss, the number should not exceed three, both for other reasons and because "it instills in the hearer the suspicion of premeditation and artifice, and this robs the speech of conviction" (*Rhet. Her.* 1.17). On the other hand, it may

[14] See also Cic. *Inv.* 1.25 and *Orat.* 124.

[15] See, for example, Quint., *Inst.* 4.2.126 and 4.2.57–59. In his attack on rhetoric, Sextus Empiricus takes this point *ad absurdum*, claiming that rhetoric is not conducive to persuasion, because rhetorical speech is too elaborate and most people take offence at that (*Adv. Math.* 2.76). See also Dimitrios Karadimas, *Sextus Empiricus against Aelius Aristides: The Conflict between Philosophy and Rhetoric in the Second Century A.D.* (Lund, 1996), 121–24.

pay to leave out some points in the enumeration, so that they will seem spontaneously to have arisen in the course of the speech. They may then be introduced with those "not unpleasing figures such as 'It has almost escaped me,' 'I had forgotten,' or 'You do well to remind me' " (Quint., *Inst.* 4.5.4). The handling of arguments should, likewise, be diversified, so that "the hearer may neither perceive the art of it, nor be worn out by too much monotony" (Cic., *De orat.* 2.177). The summary also should not refer to the introduction or the statement of facts, "otherwise the speech will appear to have been fabricated and devised with elaborate pains so as to demonstrate the speaker's skill, advertise his wit, and display his memory" (*Rhet. Her.* 2.47). As for the delivery, the orator should strive to speak "passages that have been constructed with the utmost care, in such a manner as to make it appear that they are but casually strung together, and to suggest that we are thinking out and hesitating over words which we have, as a matter of fact, carefully prepared in advance" (Quint., *Inst.* 11.2.47). As for style, the occasional hiatus should be allowed since it testifies to a carelessness that can be charming: *Habet ille tanquam hiatus et concursus vocalium molle quiddam et quod indicet non ingratam neglegentiam de re hominis magis quam de verbis laborantis.*[16] Similarly, figures are delightful, but, as Quintilian points out in discussing their use to convey strong emotion (*Inst.* 9.3.102), "Too much care for our words under such circumstances weakens the impression of emotional sincerity, and wherever the orator displays his art unveiled, the hearer says, 'The truth is not in him'." Therefore, to seem truthful, and thus to be persuasive, the orator must conceal his art and not appear to be too good.[17]

However, what the audience, or at least part of the audience, is invited to appreciate is not only the plain and unselfconscious speaking, which is apparent, but also the masterful control of the techniques of oratory that the speaker demonstrates. There are, in ancient rhetorical theory, some explicit indications of this mutual understanding between speaker and audience. Quintilian (*Inst.* 9.2.72) argues that "figures will have most effect upon the judge when he thinks that we use them with reluctance."

[16] Cic. *Orat.* 77, quoted with approval by Quintilian (*Inst.* 9.4.37).

[17] The issue of concealment takes on a whole new dimension in the perspective of gender construction. Maud Gleason points out, in reference to Quintilian's hesitancy about using artistic techniques in oratory, that "His insistence that technique should not seem studied is the result of an uncomfortable paradox: if others are supposed to judge a person's manliness from his deportment, that deportment must appear to be innate, not studied, lest the gender identity it represents be revealed as a social construct"; *Making Men: Sophists and Self-Presentation in Ancient Rome* (Princeton, 1995), 117.

Accordingly, the use of figures is to be minimized, not so that the figures may remain unnoticed, but so that the judge will realize how reluctant the speaker is to use them. It is, thus, the restrained use of figures that is most effective. The art of concealing is an art that should be appreciated: By seeming not to be too good a speaker, the speaker shows exactly how good he is.

Let us look at this idea in reference to the various genres of oratory. The dissimulation of art, and the protestation of incompetence, belong, above all, to judicial oratory.[18] Isocrates, for example, exploits the topic of not being able to speak adequately in the *Antidosis*, which is, technically, a forensic speech. He claims that he is no more a writer of speeches for court than Pheidias is a doll-maker or Zeuxis a sign-painter (2). Later he says (178–79):

> My aspiration, then, is much greater than my power to do the subject justice; but yet I shall try as best I can. . . . But I beg of you, if I appear to carry on the discussion in a manner far removed from that which is customary here, not to be impatient but to bear with me, remembering that when a man is defending himself on a charge unlike any other, he must resort to a kind of pleading which is out of the ordinary. Be patient, therefore, with the manner of my discourse and with the frankness of my speech (παρρησίαν). . . .

Thus, he asks for indulgence since he is going to speak in an epideictic rather than a forensic style.

In epideictic, according to Quintilian (2.10.11), "it is permissible to be more ornate and not merely to disclose all the resources of our art, which in cases of law should as a rule be concealed, but actually to flaunt them before those who have been summoned to hear us." However, the protestation of incompetence, or declaration of modesty, has a place in epideictic as well: The problem for the epideictic speaker is to find words that match the object of praise.[19] Hyperides, for example, in his *Epitaphios*

[18] See Christoff Neumeister, *Grundzüge der forensischen Rhetorik*, Langue et Parole, no. 3 (Munich, 1964), Chapter IV.

[19] There is a discussion of this issue in Menander Rhetor (368.8–369.17). The speaker should stress how difficult it is to speak in a way that is adequate to the situation. In imperial panegyrics, in particular, he should point out how difficult it is to match the benevolence of the emperor and the respect that he commands. If more is needed, he may say in another proemium that the matter really is in need of the eloquence of Homer or that even Orpheus and the muses could not have handled it in an appropriate way. He may even have a third proemium, which deals with the uncertainty that he feels in beginning the speech.

(2), delivered over the Athenian dead in the Lamian War, says: "Indeed my greatest doubt to-day is lest my speech may prove unworthy of their exploits." Likewise, Isocrates, in attempting to praise Athens in the *Panathenaicus*, knows that "it is difficult to find terms of praise to match deeds of surpassing magnitude and excellence" (36).[20] However, he knows that if he succeeds he will obtain a great reputation (38).

This brings us to another important element in epideictic oratory: competition. The speaker wants to prove himself better than other, previous speakers. Thus, in the *Panegyricus* (3–4), Isocrates, addressing the Athenians on the war against the barbarians and on concord among the Greeks, is indeed "not unaware that many of those who have claimed to be sophists have rushed upon this theme, but I hope to rise so far superior to them that it will seem as if no word had ever been spoken by my rivals upon this subject; and, at the same time, I have singled out as the highest kind of oratory that which deals with the greatest affairs and, while best displaying (ἐπιδεικνύουσι) the ability of those who speak, brings most profit to those who hear."[21] There are clever ways of combining the display of modesty with the claim to do better than others. In the opening words of his *Epitaphios* Lysias says (1):

> If I believed it possible, friends who are attending this burial, to set forth in speech the valour of the men who lie here, I should have reproved those who gave me but a few days' notice of having to speak over them. But as all mankind would find all time insufficient for preparing a speech to match their deeds, the city itself therefore, as I think, taking forethought for those who speak here, makes the appointment at short notice, in the belief that on such terms they will most readily obtain indulgence from their hearers. However, while my speech is about these men, my contest is not with their deeds, but with the speakers who have preceded me in praising them. For their valour has provided matter in such abundance, alike for those who are able to compose in verse and for those who have chosen to make a speech, that, although many fair things have been spoken by those

[20] In this passage Isocrates also puts to good use an aspect of the conventional *topos* of modesty: "But I do not fail to appreciate how great an undertaking this is for me at my time of life." For a different twist on this topic, see *Panathenaicus* 1–3.

[21] For the idea that the best epideictic speeches are those that profit the listeners most, see also Plato, *Mx.* 236e. For emulation in epideictic oratory, see also *Paneg.* 7–14, 186–89 ("centre your rivalry on this subject and study how you may surpass me in speaking on the same question").

> who preceded me, there are many that even they have omitted, and plenty more remain to be said by those who succeed them.

In epideictic oratory one must simply try to be and to seem to be the best ever.[22]

In deliberative oratory, the situation is more complex. According to Thucydides (8.68.1), Antiphon the politician was "a man inferior to none of the Athenians of his own day in force of character and one who had proved himself most able both to formulate a plan and to set forth his conclusions in speech (*καὶ κράτιστος ἐνθυμηθῆναι γενόμενος καὶ ἃ γνοίη εἰπεῖν*)." In spite of that, he did not speak in the public assembly (*ἐς δῆμον*) or in any other public arena (*οὐδ' ἐς ἄλλον ἀγῶνα οὐδένα*) since he "was under suspicion with the people on account of his reputation for cleverness (*διὰ δόξαν δεινότητος*), yet he was the one man most able to help any who were involved in contests, either in court or before the assembly (*καὶ ἐν δικαστηρίῳ καὶ ἐν δήμῳ*)." So, the charge of *δεινότης* may be an effective weapon against an opponent, not only in court, but also in the assembly and in public affairs generally. Thus, it would seem that a speaker should not be too good. That is surely why Demosthenes, in the speech *On the Peace* (11), argues that his previous successes have not been due to his "real or pretended cleverness" (*οὔτε δεινότητ' οὔτ' ἀλαζονείαν*), but to his good luck and to the fact that his policies were not dictated by personal advantage.

On the other hand, in the speech *On the Crown* (320), Demosthenes does refer to himself as *κράτιστα λέγων*. This phrase, however, refers as much to the soundness of his policy as it does to his ability to express it clearly. Similarly, according to Thucydides (2.60.5), Pericles once claimed to be "as competent as any man, I think, both to determine upon the right measures and to expound them (*ἑρμηνεῦσαι*)." A good *ἑρμηνεύς* must, of necessity, be a good speaker. Pericles then goes on to say that "he who determines upon a policy, and fails to lay it clearly before others (*ὅ τε γὰρ γνοὺς καὶ μὴ σαφῶς διδάξας*), is in the same case as if he never had a

[22] There are even instances when people praise themselves. Aelius Aristides wrote an oration *Concerning a Remark in Passing* in which he explains (119) why he is entitled to some *περιαυτολογία*: Since he is under divine inspiration, it is necessary for him to comment on his speeches to the audience; otherwise, there is a risk that his techniques will go unnoticed since, when he makes full and rapid use of all the elements of language, the effect is to bewilder the audience. See Ian Rutherford, "The Poetics of the *Paraphthegma:* Aelius Aristides and the *Decorum* of Self-Praise," in *Ethics and Rhetoric: Classical Essays for Donald Russell on his Seventy-Fifth Birthday*, eds. Doreen Innes, Harry Hine, and Christopher Pelling (Oxford, 1995), 193–204.

conception of it."[23] Pericles' rhetoric, according to Thucydides, consists chiefly of the ability to explain (ἑρμηνεύειν) and to instruct (διδάσκειν). It is an idealized portrait, which stresses only one aspect of his oratory, instruction through argument, while ignoring others. Those others can not, however, have been missing in actual practice.[24]

In the debate on Mytilene as reconstructed by Thucydides, Diodotos considers speeches to be διδάσκαλοι, in the tradition of Pericles. At the same time he is very much aware of the competitive and agonistic element in politics.[25] He argues that a good citizen should use fair argument to show that "he is the better speaker (ἄμεινον λέγοντα)," just as in epideictic oratory. It may well be that "Diodotos does not mean merely better rhetorical artist,"[26] but a better speaker, one who gives better advice. And when Diodotos wishes that those citizens were ineffective speakers (ἀδυνάτους λέγειν) who bedevil the political process by accusing their opponents of corruption and selfishness, he is quite clearly thinking of their ability to speak, not of what they say. The implication seems to be that oratorical skill determines political impact.

Cleon, in the same debate, also develops this idea, that form often dominates over content.[27] Cleon criticizes the Athenians for attending meetings of the assembly with the same attitude as they would bring to an artistic contest: "In a word, you are in thrall to the pleasures of the ear and are more like men who sit as spectators at exhibitions of sophists than men who take counsel for the welfare of the state" (3.38.7). In Cleon's view, political oratory at Athens has a strong epideictic flavor; political debates are seen as competitive displays. People appreciate the clever speaker even when he advocates policies that are not in their best interests; they savor especially the novel argument and applaud a good point even before it

[23] Here, by the way, as in the case of Demosthenes above, two further characteristics are added: being devoted to the welfare of the polis and being incorruptible. See, in the same vein, the characteristics of Themistocles at Thuc. 1.138, especially section 3, and Lys., *Epitaph.* 42. Plato makes similar comments about Nicias and Laches at *La.* 178b.

[24] Harvey Yunis, *Taming Democracy: Models of Political Rhetoric in Classical Athens* (Ithaca, 1996), 72–76, gives the idealized picture, but rightly states that "this mass instruction, taking place in the Assembly, must be an ally of persuasion, it must be accomplished in the very process of persuading the *demos* to adopt the policy about which they are being instructed" (73). He also points out (74) that "Pericles does not, as Thucydides portrays him, refrain from using numerous persuasive devices or fail to persuade the Assembly."

[25] See Thuc. 3.42, especially sections 4–6, and the discussion in Yunis, *Taming Democracy*, 92–99. For the relationship between deliberative and epideictic oratory, see Yunis, 181–88.

[26] Yunis, *Taming Democracy*, 93, n. 12.

[27] Thuc. 3.38, especially section 7, and Yunis, *Taming Democracy*, 87–92.

is made. The audience, he argues, is more interested in oratorical ability than in political matters, and the clever orator will always succeed.

Plato also comments on the epideictic nature of deliberative oratory. In the *Phaedrus* Socrates claims (257e) that "the proudest of the statesmen are most fond of writing and of leaving writings behind them, since they care so much for praise that when they write a speech they add at the beginning the names of those who praise them in each instance [e.g., the phrase "resolved by the Council" and the like]." After this, according to Socrates, the statesman proceeds "displaying (ἐπιδεικνύμενος) his own wisdom (σοφίαν) to his approvers, and sometimes making a very long document" (258a). Socrates continues: "Then if this speech is approved, the writer leaves the theatre in great delight; but if it is not recorded and he is not granted the privilege of speech-writing and is not considered worthy to be an author, he is grieved, and his friends with him" (258b). Socrates, as Harvey Yunis points out, in order to establish his point, "charges the Athenians with a deep confusion of deliberative and epideictic rhetoric: what passes for political deliberation is really an epideictic contest; and *rhetores*, who should be aiming at the interests of the auditors, are in fact aiming at their own interests."[28] Of course, the two interests are not necessarily mutually exclusive: An orator could primarily desire to succeed and to win a reputation for himself but at the same time still give good advice to the assembly.

In the partly spurious collection of Demosthenic proemia, the craving for δόξα, or oratorical fame, is a stock theme. In many cases, predictably, the speaker of the proemium claims that he cares only for facts and for the polis. He censures his opponents for being intent on acquiring δόξα for their display of oratory: "Now those who thus use the privilege of advising you seem to me to look upon the reputation for eloquence accruing to them from their speches (τὴν ἀπὸ τῶν ῥηθέντων τοῦ δύνασθαι λέγειν δόξαν) as an adequate ambition, but it is my opinion that the man who proposes to advise the State on matters of policy should rather consider how the measures adopted shall prove of benefit, and not how his remarks of the moment may find favour" (9.2). Another speaker says:

> I should have wished that some of the [other] speakers had displayed as much eagerness to present the best proposals as they did to be thought good speakers (εὖ δόξουσι λέγειν), in order that these men might have been regarded as honest instead of clever at speaking

[28] *Taming Democracy*, 184–85.

> (δεινοὶ λέγειν) and that your interests, just as is proper, might have been in better shape. As it now is, however, some seem to me to be entirely content with the reputation for speaking (τὴν ἀπὸ τοῦ λόγου δόξαν), but to be taking no thought for what will subsequently befall you. (32.1)

And we see similar ideas elsewhere in the proemia (cf. 33, 45, 56).

So, while Thucydides knows that people were suspicious of Antiphon διὰ δόξαν δεινότητος, orators seem consciously to have tried to become famous for being δεινοὶ λέγειν. Or, at least, they could be credibly criticized for harboring that ambition. Thus, an eloquent display of rhetoric seems to be politically effective, or, at least, not to have any alienating effect. We need not, under the influence of Plato and Thucydides and all those orators who eloquently warn against eloquence, equate display with falsehood, flattery, self-interest, or self-promotion. In deliberative oratory, eloquence is rewarded, and an orator should be good enough to be admired.

Ancient rhetoricians are well aware that it may pay to show off. According to Quintilian (8.3.2), "by the employment of skilful ornament the orator commends himself."[29] He knows that when an audience finds it pleasant to listen, its attention and readiness to believe are both increased. And sometimes the listeners are won over primarily by the delight that they experience and the admiration that they feel: *plerumque ipsa delectatione capiuntur, nonnumquam admiratione auferuntur* (8.3.5). Quintilian quotes with admiration what Cicero wrote in one of his letters to Brutus, now lost: "Eloquence which evokes no admiration is, in my opinion, unworthy of the name" (8.3.6). The rhetorical question that Cicero had posed in *De optimo genere oratorum* (12) is still relevant: "Is there any doubt whether we desire our eloquence to be merely tolerable, or to arouse admiration as well?"

In the political life of my own country, eloquence is not much in evidence, and display is looked upon with suspicion. What people value is plain talk, what one might call the rhetoric of awkwardness and clumsiness (which, by the way, is skilfully exploited by many people who try to appear to be less eloquent than they really are). But there seems to be a growing tendency to put more value on eloquence in politics, on rhetorical skills and oratorical cleverness. Until a few years ago, when viewers

[29] On the tendency to display, even in judicial oratory, see also 4.1.12, 9.4.129, 10.2.27, 12.9.6 (on the orator who "wins applause despite the approval meted out to his case"), 12.10.73–76.

in Norway were polled after television debates between politicians, they were asked which side they agreed with and supported. Today the question is rather: Who managed best in the debate? Who was the better orator? Interestingly—luckily, perhaps—there still seems to be a gap between whom people consider to be the better orator and whom they trust more. But the clever speakers seem to come out somewhat better because people admire them for their eloquence. Thus, as in many areas of human life, the Greeks and Romans raised an issue that is still with us today.[30]

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[30] While I have broached some aspects of the question that I pose in the title of this paper, I have not at all touched upon the following two, for which there is ample evidence in ancient rhetoric: the fact that rhetorical experts and lay audiences have different competencies and expectations (cf. Quint., *Inst.* 2.4.7–9 and 8.3.2–4) and the competing ideas of "epideictic" display in political and judicial oratory as a sign of decline (cf. Quint., *Inst.* 4.2.126) or as a concomitant of the appearance of a new kind of rhetoric (cf. Quint., *Inst.* 12.9.5–6).

CHAPTER 2

What the Laws Have Prejudged: Παραγραφή and Early Issue-Theory

by Edwin Carawan

"By the law against adulterers . . . the killer enters a plea in bar."

One of the most prolific inventions of ancient rhetoric was issue-theory—the art of defining questions in dispute and framing hypothetical cases to illustrate them—and murderous revenge for adultery was one of the most productive premises.[1] For the killer can challenge the suit against him by invoking a license in the law. In one scenario, the husband kills first the adulterer and later the wife; in another, the husband kills first the wife and then later the lover; in yet another, the son kills at the father's urging; and, indeed, the wife sometimes kills the adulterous husband. The plea to bar prosecution, *παραγραφή*, was an essential feature of such hypotheses and integral to the issue that Hermagoras, the founder of issue-theory, called

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Abbreviations used in reference to collections of inscriptions and rhetorical treatises:

IG - *Inscriptiones Graecae.* Berlin: de Gruyter, 1873–.

RG - Walz, Christian, ed. *Rhetores Graeci.* 9 vols. Stuttgart: Didot, 1832–6.

SEG - *Supplementum Epigraphicum Graecum.* Amsterdam: Gieben (serial).

SIG - Dittenberger, Wilhelm, ed. *Sylloge Inscriptionum Graecarum.* 3rd ed. 4 vols. 1915–24. Reprint, Hildesheim: Olds, 1982.

Tod - Tod, Marcus N. *Greek Historical Inscriptions.* 2nd ed. 2 vols. 1947. Reprint in 1 vol., Chicago: Ares, 1985.

[1] For an introduction to the world of "issue-theory" (here used in preference to stasis-theory or Statuslehre), see D.A. Russell, *Greek Declamation* (Cambridge, 1983), 21–73, esp. 21–39, on Sophistopolis; for detailed exposition, see Malcolm Heath, *Hermogenes On Issues: Strategies of Argument in Later Greek Rhetoric* (Oxford, 1995). The hypotheses on slaying the adulterer will be discussed in the second part of the paper (esp. at nn. 64, 69, 75–6). To render the term *παραγραφή* I prefer "plea in bar" over "demurrer" or "special plea": see, for now, S.C. Todd, *The Shape of Athenian Law* (Oxford, 1993), 135.

μετάληψις.[2] How Hermagoras himself defined and illustrated this issue remains doubtful: Among his successors we have endless exegesis but little agreement. And what connection he made between the constructions of theory and the court procedure is even more dubious. The scenarios of adultery and murder that emerged in later theory belong entirely to the fanciful realm aptly called "Sophistopolis." By contrast, the historical plea in bar that emerged at Athens had nothing to do with murder trials: It appears primarily as a procedural obstacle in mundane disputes over debts and other obligations. Nonetheless, the hypotheses of issue-theory have sometimes shaped scholarly opinion, ancient and modern, as to the legal grounds for παραγραφή.[3] These are old, entangled problems. In order to solve them, we must first extract the working principle of παραγραφή as an artifact of legal history, free of theoretical assumptions; then perhaps we can better grasp the tenuous connection between the actual proceedings and the model that Hermagoras devised. It is a tribute to George Kennedy that we venture into this borderland between theory and the events that inspired it. For throughout his definitive history of the ancient art he has traced the evolution of rhetorical invention as it was shaped by changing society, always beginning with this question: What is the debate about?[4]

Some framework for defining questions at issue emerged in the time of Aristotle, if not earlier.[5] Courtroom orators in the fourth century

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[2] See D. Matthes, "Hermagoras von Temnos 1904–1955," *Lustrum* 3 (1958), 58–214 (165–66 on μετάληψις); and fragments collected by Matthes in *Hermagorae Temnitae Testimonia et Fragmenta* (Leipzig, 1967).

[3] Thus the manuscript hypothesis for Antiphon 5, *Herodes*, describes the defense, ἀπολύεται παραγραφικῶς, and U. von Wilamowitz, *Aristoteles und Athen*, vol. 2 (Berlin, 1893), 369, agreed. But see H.J. Wolff, *Die Attische Paragraphe* (Weimar, 1966), 113. Wolff himself was sometimes misled by sophistic material; see below n. 45

[4] Kennedy's preoccupation with defining the issue is already evident in "Focusing of Arguments in Greek Deliberative Oratory," *Transactions of the American Philological Association* 90 (1959), 131–38. For the importance of Hermagoras, see *The Art of Persuasion in Greece* (Princeton, 1963), 303–20; *Greek Rhetoric under Christian Emperors* (Princeton, 1983), 73–96; and most recently M. Dilts and G. Kennedy, *Two Greek Rhetorical Treatises* (Leiden, 1997), ix–xix and 185–91. For Kennedy's influence among scholars at work on the rhetoric of law, cf. Michael Gagarin, *Antiphon* (Cambridge, 1996), 2, acknowledging "Kennedy's ground-breaking work [*Art of Persuasion*]," treating "the broader perspective of rhetoric in a full sense."

[5] The locus classicus is Quintilian, *Inst.* 3.6 (mentioning antecedents in Aristotle, sec. 60). The *Tetralogies* attributed to Antiphon are often cited in this connection: see esp. D.C. Innes, "Gorgias, Antiphon and Sophistopolis," *Argumentation* 5 (1991), 221–31; see also my account in *Rhetoric and the Law of Draco* (Oxford, 1998), 171–215; cf. Kennedy, *New History of Classical Rhetoric* (Princeton, 1994), 24.

often referred to notorious, no doubt fictionalized precedents as a way of defining the issue to their advantage.[6] And they sometimes constructed purely hypothetical cases from a legal fiction, in order to embarrass their opponents.[7] In the generation after Aristotle, Quintilian tells us, the practice of composing fictitious cases for specific issues of court or council emerged as a genre in its own right.[8] Hermagoras evidently responded to this early experimental material with a systematic theory. The distinctive feature of his theory was the issue that he called *μετάληψις*. This fourth issue goes beyond the well-known questions of fact (Did he do it?), definition (Is it murder?), and "quality" or circumstance (Did he have some excuse or justification?). From surviving testimony, we conclude that the term *μετάληψις* properly refers to the plaintiff's response to the plea in bar: It is the answer to *παραγραφή*. But how Hermagoras framed the issue is lost in the permutations of later theory. In the second part of this paper we shall try to extricate the model from the derived forms.

But the first problem, the historical problem, takes us back to the original function of *παραγραφή* as a legal safeguard devised in the early years of the restored democracy. From that noble beginning it became one of the most troublesome complications in Athenian law. The question of its proper application is especially germane to recent work emphasizing the very confusion of issues. For at Athens, whatever the procedure, the question at issue often seems inscrutable or inconsequential—the trial is likely to establish nothing decisive.[9] Litigation functions largely as social drama: The jurors are more interested in adjusting the precarious balance between competing players than deciding any defined question once and for all. One can easily see the advantage of this approach in the quarrels of Demosthenes and Aeschines. The disadvantage is that scholars are sometimes inclined to dismiss the question at issue as something like the plot of a popular comedy: What is the trial about? It is about anything and

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[6] Thus, for instance, Demosthenes (21.71–76) recalls the murder trial of Euaeon and outlines the arguments on either side in order to frame the issue in his own case against Meidias.

[7] Note the hypothetical cases posed by Andocides 1.92–101; see n. 27, below.

[8] Quintilian, *Inst.* 2.4.41–2: *fictas ad imitationem fori consiliorumque materias apud Graecos dicere circa Demetrium Phalerea institutum fere constat. An ipso id genus exercitationis sit inventum . . . parum comperi.* Philostratus (*VS* 481) reports that Aeschines in exile invented the genre.

[9] Two seminal articles appeared in 1985: Robin Osbourne, "Law in Action in Classical Athens," *Journal of Hellenic Studies* 105 (1985), 40–58, and Sally Humphreys, "Social Relations on Stage: Witnesses in Classical Athens," *History and Anthropology* 1 (1985), 313–69. See also David Cohen, *Law, Violence, and Community in Classical Athens* (Cambridge, 1995), 87–142, with bibliography on the anthropological foundations of this approach.

nothing in particular.[10] The virtue of παραγραφή is that it functioned as something of a remedy against this limitless recourse. How did it come to fulfill that function? To answer that question we must first examine the principle of παραγραφή and its relationship to amnesty and estoppel.

By the prevailing view, παραγραφή was invented in the aftermath of civil war at Athens, as a bar to lawsuits in violation of a "general amnesty": Isocrates' *Against Callimachus* is the one surviving document of that original intent. Supposedly this safeguard of amnesty was quickly extended to other uses—indeed, the "original intent" is never again mentioned. In the later fourth century, we have seven speeches and a substantial fragment which seem to suggest that παραγραφή had become a fairly mechanical "bar to litigation" based on purely procedural criteria: Is the case in the right jurisdiction, within the time limit and conforming to other statutory requirements? Or is the case really subject to some other statute and another jurisdiction? To decide such issues, the παραγραφή supposedly had its own hearing, quite apart from the main hearing on the original complaint.[11] It was a separate trial, all about procedural proprieties.

But let us reconsider a question that is long overdue for rethinking. What were the original grounds for the bar to litigation that Archinus introduced in 401/0 and how was it related to the procedure of the extant speeches? Isocrates suggests that the original criterion was contained in the rule "not to recall past wrongs" (μὴ μνησικακεῖν) and scholars regularly interpret that rule as a "general amnesty."[12] Supposedly, the Athenians devised παραγραφή as a way of enforcing a "law of forgiveness," as a broad immunity for all the wrongs of civil conflict.[13] And once this

[10] I take this theme with some liberties from a useful study by Stephen Todd, "*Lysias against Nikomachos:* the Fate of the Expert in Athenian Law," in *Greek Law in its Political Setting*, eds. L. Foxhall and A.D.E. Lewis (Oxford, 1996), 101–31. As to "what it is that Nikomachos is charged with," Todd takes "the more subtle and accurate line that in order to be found guilty in an Athenian court, you did not actually need to have done (or not done) anything in particular" (108).

[11] Such is the model established by Wolff, *Attische Paragraphe.* Crucial to Wolff's theory is Lys. 23, which is devoted to the challenge to jurisdiction, Pancleon contending that he can not be sued before the polemarch. But the plea is not called παραγραφή, and it looks as though the plaintiff speaks first (as in ordinary procedure); cf. Todd, *Shape of Athenian Law*, 168, n.1.

[12] Thus even Wolff (*Attische Paragraphe*, 20) regards the law of Archinus, "das die . . . allgemeine Amnestie (μὴ μνησικακεῖν) . . . aus der Sphäre der bloßen Deklamation herausheben und praktisch durchführbar machen sollte."

[13] J.M. Stahl, "Nachträgliches über athenische Amnestiebeschlüsse," *Rheinisches Museum* 46 (1891), 486, was the first to confront the implication that *Ath. Pol.* indicated no such de-

remedy was no longer needed, the plea in bar was quickly adapted to other, purely procedural criteria. But if we examine the extant historical record, the evidence is quite clear: *μὴ μνησικακεῖν* did not mean amnesty; and *παραγραφή* was devised for a more lasting and practicable purpose. To discover what it did mean, let us first reexamine the relevant documents and then the argument in the "test case." We will look first at inscriptional evidence.

"Amnesty," as we commonly use the term, conveys pardon from punishment or immunity from prosecution, particularly for political offenses and acts of war.[14] But in documents of the fifth and fourth centuries B.C., *μὴ μνησικακεῖν* never conveys that sense of pardon or immunity as a bar against lawsuits in the first instance. In treaties and negotiated settlements the oath *μὴ μνησικακεῖν* functions as a seal or closing device, a reciprocal pledge that the inevitable disputes will be resolved in the manner prescribed by the covenants of that agreement. And those covenants typically include provisions for litigating disputes.[15] The vow "not to recall past wrongs" is not in itself a cancellation of claims; it means that grievances are settled in the manner specified in the agreement and that there shall be no retribution outside this arrangement. The most immediate and

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cree (and thus contradicted his earlier reconstruction); he supposed simply that no mention is needed since the decree would confirm the treaty. Paul Cloché, *La restauration démocratique à Athènes en 403 avant J.C.* (Paris, 1915), inclined to the same view, esp. 294. A. Dorjahn, *Political Forgiveness in Old Athens: The Amnesty of 403 B.C.* (Evanston, 1946), passim, no longer assumed a law or decree, but held to a view of "amnesty" in something approaching the modern sense (despite the distinctions posed on page 1). This presumption is greatly diminished but not altogether abandoned in T. Loening's useful study, *The Reconciliation Agreement of 403/2 BC in Athens* (Wiesbaden, 1987), 28–84.

[14] *OED*, s.v. "amnesty," 2: "An act of oblivion, a general overlooking or pardon of past offences, by the ruling authority," giving North's translation of Plutarch (1580) as the first example. For the distinction between amnesty in the modern sense and the ancient formula, cf. U.E. Paoli, *Studi sul Processo Attico* (Padua, 1933), 122. On the disparity between Greek and Roman concepts, see T. Mommsen, *Römisches Strafrecht* (Leipzig, 1899), 457–58.

[15] The inscriptional evidence will be given more detailed treatment elsewhere. Some key provisions: *IG* I^3 76 (=Tod 68; *SEG* 3.16), treaty between Athens and Bottiaeans, 422 B.C. (12–16) "I shall defend those who make covenant . . . faithfully . . . and shall not recall past wrongs." *IG* II^2 111 (=Tod 142), Athens and Ioulis, 362 B.C.: exile and confiscation for those implicated in insurrection, trial for those who dispute (41–49); reciprocal oaths (58–61; 82–84) "I shall not recall past wrongs . . . nor kill or banish any who abide by the oaths and these covenants." *SIG* 306 (=Tod 202) Restoration of Exiles at Tegea 324 B.C.: elaborate provisions to settle or litigate disputes over property and other losses; closing oath (59–61) "I shall not recall past wrongs . . . nor hinder the safety of returning exiles." *Μὴ μνησικακεῖν* has a similar effect in private settlement: [Dem.] 59.45–7; cf. Adele Scafuro, *The Forensic Stage: Settling Disputes in Greco-Roman New Comedy* (Cambridge, 1997), 121–22.

urgent effect is that there will be no out-of-court reprisals.[16] And often the treaties concluding *μὴ μνησικακεῖν* require that all subscribers defend those who abide by the covenants; those who violate the pledge are denied that protection and may be virtual outlaws.[17]

For the difference between this conventional formula and amnesty in the modern understanding, we have one instructive example: an inscription recording *ἀμνηστία and* the pledge *μὴ μνησικακεῖν* from about the time of Hermagoras and from the same region, a treaty between Miletus and Magnesia.[18] In this settlement, for the first time, we find *ἀμνηστία* in a sense approaching modern amnesty; it is paired with *ἄδεια*, the older term for immunity, and specifically applies to military leaders for their responsibility in acts of war. There is no suggestion that this amnesty has any effect on other lawsuits, for example, property disputes among citizens dispossessed by the violence. Indeed, the document provides specifically for litigating such claims. The treaty closes with the oath that had been standard in such agreements for three hundred years: "to keep all the covenants and abide by the decisions and 'not recall past wrongs' " (*μὴ μνησικακεῖν*). That closing means that subscribers to the treaty shall adhere to their covenants, including the rules for litigating grievances. There shall be no out-of-court vendetta. This oath is enforced by religious conviction and social conscience, not by any legal remedy. *Μὴ μνησικακεῖν* is not a law against lawsuits.

The use of *ἀμνηστία* as a term of law seems to have arisen in the Hellenistic period, even as *παραγραφή* and similar devices to bar litigation were recognized throughout the Aegean.[19] There is, indeed, a peculiarly

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[16] *Μνησικακεῖν* indicating violent reprisal: Thuc. 4.74.2–3; Plato, *Ep.* 336e–337a, *σφαγαῖς μνησικακοῦντες*; Diod. 14.34.4–6 (401); 15.40.2 (375/4) *ὁ δημοτικὸς ὄχλος . . . ἐμνησικάκει . . . πολλοὺς ἀποσφάξαντες*.

[17] Such is the situation indicated in *Ath. Pol.* 39.5–40.2: see, for now, my discussion in *Rhetoric and the Law of Draco*, 128–33.

[18] *SIG* 588.60–4: all who served as generals or other officials in the recent conflict are to have "amnesty and immunity" for acts of war; 78–89, ambassadors are exchanged to administer the oath to the assembly. Each body will swear at customary sacrifice, *πάσας διαφυλάξειν τὰς συνθήκας καὶ ἐμμενεῖν τοῖς δεδογμένοις καὶ μὴ μνησικακήσειν περὶ μηθενὸς τῶν προγεγονότων* (*bis*).

[19] Thus the treaty between Delphi and Pellana, dated ca. 280 B.C., contains provisions to bar suits in violation of the covenants (*παραγράψασθαι*): see B. Haussoulier, *Traité entre Delphes et Pellana* (Paris, 1917), esp. 30–33. From the second century B.C. a decree of Samos, *SIG* 976.8–10, provides *παραγραφή* to bar a magistrate's judgment. Two honorary decrees at Erythrae in Ionia, ca. 200 B.C., include *παραγραφαί* among the judge's duties, to decide

revealing document of both developments from the city of Hermagoras and from about his time: a pair of decrees attempting to resolve disputes between Temnos and the neighboring city of Klazomenai.[20] In the first decree, we learn that judges from Knidos were called in to arbitrate a border dispute that had erupted once again, despite a previous settlement; their verdict is that the new claims by Klazomenai are baseless and the matter is at an end, once and for all. They call this state of finality *ἀμνηστία*. In the second decree, we find a set of detailed arrangements for litigation to resolve disputes among citizens of the two cities and to bar or penalize litigation outside the covenants.

In sum, there is no documentary evidence that *μὴ μνησικακεῖν* means immunity from partisan lawsuits, or, indeed, that the Greeks naturally thought of resolving civil conflict by canceling litigation in the first instance.[21] After all, at Athens, after 403, we find quite a number of cases seeking retribution for injuries sustained in the recent troubles.[22] Scholars have tried to salvage a "general amnesty" in something approaching the modern sense by granting a list of exceptions, but the exceptions overwhelm the rule.

So let us reconsider the test case, Isocrates' speech *Against Callimachus*, and the founding principle. The purpose that Isocrates attributes to Archinus (18.3) is "that those who dare to 'recall past wrongs' not only be

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"suits, pleas-in-bar, and oaths"; H. Engelmann and R. Merkelbach, *Die Inschriften von Erythrai und Klazomenai*, vol. 1 (Bonn, 1972–3), 116 and 117.

[20] First published by Peter Hermann, "Die Stadt Temnos und ihre auswärtigen Beziehungen in hellenistischer Zeit," *Mitteilungen des Deutschen Archäologischen Instituts: Istanbuler Mitteilungen* 29 (1979), 249–71; cf. *SEG* 29 (1979), 1130. F. Piejko offered further restorations, "Textual Supplements to the New Inscriptions Concerning Temnos," *Mitteilungen des Deutschen Archäologischen Instituts: Istanbuler Mitteilungen* 36 (1986) 95–97; cf. *SEG* 36 (1986), 1040.

[21] Patrocleides' decree in And. 1.73–76 also conforms to this principle. The pledge *μὴ μνησικακεῖν* follows the rule that no one is to keep a list of those who were formerly *ἄτιμοι* but are now restored to rights. *Μνησικακεῖν* would not refer to lawsuits in the first instance, but further reprisal, after the original liabilities were thus disposed of.

[22] These cases will be given detailed treatment elsewhere. Here a few references must suffice. For complicity in murder, we have the cases against Agoratus (Lys. 13) and Menestratus (Lys. 13.55); see my *Rhetoric and the Law of Draco*, 354–70. For property disputes involving obligations affected by civil conflict, Lys. 17 and 18; similarly, the fragmentary speech of Lysias against Hippotherses indicates that litigation was available in cases where returnees could not reach a settlement. And there are several cases in the Lysianic corpus identified as scrutinies or accountings, which have been arbitrarily excluded (see the note following). Dorjahn, *Political Forgiveness*, 32–33, gives a list of exceptions to the amnesty that is still often invoked.

proved false to their oath and await retribution from the gods, but also be fined forthwith." This may be a fair statement of the spirit, but it is not the wording or substance of the law.[23] Neither oath-breaking nor partisan vindictiveness was a functional threshold for the bar to litigation. That is not what the trial is about.

The gist of the case is this: Callimachus had some money confiscated under the Ten, the last phase of the oligarchic regime. Isocrates' client was present when the money was seized and Callimachus held him liable. At an earlier stage, they had reached a settlement in arbitration disposing of their dispute with formal "release and quittance" (ἄφεσις and ἀπαλλαγή). Thus the defendant rid himself of any liability as accessory to the crime by paying part of the loss. But Callimachus later prosecuted over the same incident, now alleging that the defendant was not just an accessory; he was the informant and instigator. Isocrates' client now invokes the law for παραγραφή. Of course, he glorifies the inspiring principle of solidarity, but he bases his case upon specific covenants. Thus, he invokes the συνθῆκαι "expressly acquitting informants or denouncers" (20). And he appeals at length to the rule that decisions in arbitration are to be valid; so his prior settlement with Callimachus should close the case.[24]

His first line of defense is the arbitrated settlement, which took the form of a δίαιτα ἐπὶ ῥητοῖς. This "conditional settlement" has caused much perplexity: The two parties reach an agreement without arbitration but then call upon a third party as nominal arbiter to certify compliance.[25] Evidently the law was so phrased as to require at least a nominal arbitration to give closure to the agreement and allow certain remedies against further dispute.

We have a rare congruence of evidence on this part of the restoration mechanism. The relevant document in Andocides is muddled, but luckily we have corroboration elsewhere. Andocides invoked a law that δίκαι and δίαιται under the democracy are valid; in the same context he found a rule

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[23] Dorjahn, *Political Forgiveness*, 35, assumes that Isocrates' rendering is an "apparently complete and accurate quotation of this law." But perjury *per se* (false oath as opposed to false testimony) was not a legal offense to the Athenians. The grounds for παραγραφαί were not the oaths *per se*, but the covenants they stood for.

[24] Isoc. 18.2, 9–15, 18–19. Cf. Dem. 24.54–56 (below, n. 26).

[25] We know of one other instance in the early fourth century: Isoc. 17.19 (ca. 393). Thereafter, if both sides swear to a settlement, no such arbiter seems necessary: The parties finalize their διαλλαγαί with release and quittance; and any further claim can then be countered with a παραγραφή. For theories on the shifting criteria, cf. A. Steinwenter, *Die Streitbeendigung durch Urteil, Schiedsspruch und Vergleich nach griechischem Recht* (Munich, 1925), 135–40.

at least to the effect that "one must apply the laws from the archonship of Eucleides." The latter clause is a crux in itself; it is sometimes cited as *the* legal enactment of general amnesty. But it looks as though the document in Andocides is misleading on this point. For in Dem. 24.56, we find another, more plausible version, one that can not be extracted from phrasing in the speech itself, as the lawtext in Andocides probably was.[26] If we take the two testimonia together, the common denominator is this: *δίκαι* and *δίαιται* concluded under the democracy shall be valid and enforceable; legal actions under the Thirty are *in*valid and without effect. In this respect, the laws apply from the archonship of Eucleides: All liabilities are governed by the settlement of that year—and there is no going back upon liabilities thus disposed of. The hypothetical cases that Andocides constructs against his accusers illustrate this rule.[27]

Covenants to this effect—obligations incurred under democracy take effect, those under the oligarchy are disregarded—were an indispensable part of the reconciliation, as Isocrates attests.[28] There had to be rules recognized by both sides about how to resolve the inevitable disputes over property and damages. It was also one of the first provisions that had to be translated from covenant into legislation, before ordinary suits among

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Andocides 1.87–88:	Dem. 24.56:
τὰς δὲ δίκας καὶ τὰς διαίτας κυρίας	*τὰς δίκας καὶ τὰς διαίτας, ὅσαι ἐγένον-*
εἶναι, ὁπόσαι ἐν δημοκρατουμένῃ	*το ἐπὶ τοῖς νόμοις ἐν δημοκρατουμένῃ*
τῇ πόλει ἐγένοντο.	*τῇ πόλει, κυρίας εἶναι. . . .*
τοῖς δὲ νόμοις χρῆσθαι	*ὁπόσα δ' ἐπὶ τῶν τριάκοντ' ἐπράχθη*
ἀπ' Εὐκλείδου ἄρχοντος.	*ἢ δίκη ἐδικάσθη ἢ ἰδίᾳ ἢ δημοσίᾳ, ἄκυρα εἶναι.*

Andocides explains: "You made judgments in *δίκαι* and *δίαιται* valid, all those that occurred under the democracy, so that there would be no cancellation of debts or renewal of old suits, but private transactions should take effect (*ὅπως μήτε χρεῶν ἀποκοπαὶ εἶεν μήτε δίκαι ἀνάδικοι γίγνοιντο, ἀλλὰ τῶν ἰδίων συμβολαίων αἱ πράξεις εἶεν*) . . . but for public suits one must apply the laws from Eucleides."

[27] Andocides makes a distinction that is clear in the Demosthenic lawtext but not in the document inserted in And. 1.87–88 (see the previous note). The rule that he renders "apply the laws from Eucleides" has a special relevance to public suits (*δημόσια*), especially those concerned with old disabilities: Someone who incurred *ἀτιμία* under the old regime (as, say, a state debtor) can not be arrested for violating that old disfranchisement. The hypothetical case against Cephisius for defaulting as tax collector (92–93) illustrates this rule. The other examples involve official acts under the Thirty, both covered by specific covenants: *Ath. Pol.* 39.5, no action for complicity in judicial murder; And. 1.99, barring "warrant and arrest" to the council.

[28] Isoc. 18.24: "You have made private agreements valid (*ἰδίας ὁμολογίας . . . κυρίας*) by public ordinance."

citizens, δίκαι ἀστικαί, were reinstituted in 401.[29] Thus, in the course of integrating the covenants that still applied into the fabric of enduring laws, παραγραφή was devised as a remedy against anyone who brought suit in violation of those covenants.[30] And of those covenants perhaps most vital to public order was the rule that previous decisions resolving disputes over property or other losses, δίκαι and δίαιται under the democracy, shall be valid and enforceable.

Up until the law for παραγραφή such decisions could be enforced by sworn testimony before a magistrate, διαμαρτυρία. The defendant had only to swear that the matter had been settled with due formality, and the archon would dismiss the case, as he did initially against Callimachus.[31] But given the litigious ingenuity of the Athenians, there would be many cases where a disgruntled claimant could find some new ground for opening the old dispute: Perhaps he could claim that the arbitration never happened or was not valid; or perhaps he would insist upon some separate issue not covered by the previous decision. That sort of claim can not be quashed by διαμαρτυρία, and that is precisely where παραγραφή comes in.

Isocrates tells us that Callimachus will argue there was no arbitration, and the preemptive argument shows how crucial the earlier settlement will be to the case at hand.[32] But by his second line of argument Isocrates acknowledges that the trial is about something more: Callimachus is also claiming that there is another issue beyond what was settled in arbitration.

In section 20, our defendant again invokes the covenants, now the clause "expressly acquitting informants or denouncers." [33] This reveals the

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[29] Controversy over revision of the covenants is indicated in Isoc.18.21, 26. For dating the speech after δίκαι ἀστικαί were reinstated, cf. D.M. MacDowell, "The Chronology of Athenian Speeches and Legal Innovations in 401–398 B.C.," *Revue internationale des droits de l'antiquité* 18 (1971), 267–73.

[30] Much of the original διαλλαγαί reported in *Ath. Pol.* dealt with relocation to Eleusis; cf. Loening, *Reconciliation*, 30–50. These were moot after the recovery of Eleusis in 401.

[31] Initially (9–12) defendant was persuaded to settle and thus rid himself of further claims, submitting the case to arbitration. At first C. abided by the agreement (πρῶτον ἐνέμεινε τοῖς ὡμολογημένοις) but later brought suit for 100 minae; suit was barred by διαμαρτυρία, based on the decision in arbitration (διαίτης γεγενημένης).

[32] Preemptive argument: 13–16. C. will argue that there was no arbitration, τὴν δίαιταν . . . ἔξαρνον, that he would not have trusted the arbitration to defendant's friend or settled for so little. Defendant counters, neither point is proof, ὡς ἡ δίαιτα οὐ γέγονεν: If C. contends ὡς ἡ δίαιτα οὐ γέγονεν, he should have challenged the διαμαρτυρία for false testimony.

[33] Loening, *Reconciliation*, 56, discounts the covenant shielding "informants and denouncers" because such measures were "redundant since the amnesty would have protected them."

cutting edge of Callimachus' complaint: He has some new measure of liability, beyond what was settled in the earlier suit; it is for this reason that he has so dramatically inflated his claim, from two hundred drachmas to ten thousand. So, it is not a question of fact or performance, a matter that the archon or arbiter could determine: It is an arguable issue for the jury to decide, whether this new claim is canceled by the previous settlement and the covenant shielding informants.

It is not a question of immunity against partisan lawsuits: Callimachus and Isocrates' client both belong to the city party, and Isocrates never suggests that Callimachus is motivated by anything other than greed. There are a few passages, in this speech and elsewhere, that seem to suggest that lawsuits were barred if they were partisan in motive. The most suggestive of these is the remark in section 23 of our speech, that Thrasyboulus and Anytus, though they know the men who listed their property for confiscation (*ἀπογράψαντας*), "nonetheless do not dare to bring suit against them or 'recall past wrongs' (*οὐ δίκας λαγχάνειν οὐδὲ μνησικακεῖν*)."

But this is not to say that Thrasyboulus and Anytus failed to recover their property from those who had acquired it. The covenants allowed returning exiles to recover lost real estate: Citizens could simply take possession of their land and houses; movable goods that had been confiscated and sold had to be repurchased; goods that had not been sold could be simply repossessed. While the ordinary civil courts were closed (403–1), the inevitable disputes were to be resolved privately in arbitration or in special proceedings before the syndics.[34] So, when Isocrates says that "they have neither brought suit nor 'recalled past wrongs,'" he means that they have neither litigated nor gone against the disposition of these matters in the covenants. The point is that they have not taken punitive action against the *ἀπογράψαντες*, those who listed the property for liquidation and were then rewarded with part of the proceeds. These people are protected, just as our defendant is, by the covenant regarding informants and denouncers.

Thus, the argument in the test case itself suggests that *παραγραφή* was introduced as a bar to lawsuits that violate the covenants still in force and particularly the rule that *δίκαι* and *δίαιται* under the democracy shall be valid. In this context *παραγραφή* was introduced, not to legislate forgiveness, but as a means of closing the case. *Παραγραφή* was a bar to lawsuits that violate prior decisions, covenants, and binding agreements,

[34] For the reconstruction of the covenants, see, for now, Loening, *Reconciliation*, 51–54, 88–97.

not for such crimes of conscience as partisan vindictiveness. The essence of παραγραφή was "estoppel."[35] In the early years of reconstruction, the Athenians went to considerable lengths to articulate this principle and incorporate it into the laws. And this same principle becomes the defining feature of later παραγραφαί.

The best known example is the case of Phormio against Apollodorus in Dem. 36; it is also one of the two Demosthenic παραγραφαί cited by late theorists to illustrate μετάληψις (see below). Pasion had left his freedman Phormio in control of the bank, and even bequeathed his wife to his former bondsman. Pasion's son Apollodorus had sued Phormio twice in twenty years, and each time was formally reconciled with "release and quittance." Now ten years after the last settlement and long after the time-limit had expired, Apollodorus brings a huge claim for monies allegedly embezzled from his father's estate. There is much more to the case, but the crux of the matter is closure: Phormio has brought the παραγραφή to make their agreement binding and decisive (ἵνα ἀπαλλαγή τις γένηται κυρία [2]).

I now want to look at the procedural model. If this is the true nature of παραγραφή—essentially a rule of estoppel, barring further action after a binding decision—how have scholars become so firmly convinced that παραγραφή evolved from a "law of forgiveness" into a baffling array of technicalities? Prevailing opinion is based on two fundamental misconceptions, and both go back to Cicero.

In the very beginning of the *First Philippic*, Cicero tells us that he proposed a decree of amnesty in 44 B.C. on the model of the Athenian settlement of 403. In this speech he glosses the alien concept as *oblivio discordiarum*, but he tells us that in his speech to the senate he used "the Greek word." The word Cicero used was ἀμνηστία.[36] Indeed Cicero was often

[35] For a useful account of the early development in English Law, see Antoine Martin, *L'estoppel en droit international public précédé d'un aperçu de la théorie de l'estoppel en droit anglais* (Paris, 1979), 9–62. Estoppel originated essentially as a rule of evidence (esp. "by record" or "by deed") but emerged as a matter of equity (e.g., "by *res judicata*"). The abiding principle is articulated by Lord Denning M.R. in an opinion of 1982, quoted in H. Hanbury and J. Martin, *Modern Equity*, 15th ed. (London, 1997), 892: "When the parties to a transaction proceed on the basis of an underlying assumption . . . on which they have conducted the dealings between them—neither of them will be allowed to go back on that assumption when it would be unfair or unjust to allow him to do so."

[36] Recent arguments to the contrary: Luciano Canfora, *Studi di Storia della Storiografia Romana* (Bari, 1993), 307–9. Dio gives a version of the speech, and he renders *oblivio* back into Greek as μὴ μνησικακεῖν. But Canfora's conclusion is not based on any systematic study of the two terms. He seems to rely on the assumption that Cicero knew about the Aristote-

cited by later writers in Latin for introducing ἀμνηστία into the language; and all Latin references to the Athenian amnesty were probably influenced by Cicero, beginning with Nepos, who tells us (8.3) that Thrasybulus authored a "law of forgiveness" (*lex oblivionis*).[37]

Cicero's view of the Athenian settlement as an amnesty imposed by decree indelibly imprinted scholarly opinion.[38] Indeed, it was generally believed that Athens enacted a decree of amnesty like the one Cicero proposed, until the discovery of the London papyrus of *Athenaion Politeia*. The Aristotelian document would suggest that there was no decree of amnesty per se, no *lex oblivionis*. Μὴ μνησικακεῖν was the closing device of the treaty, an oath to abide by its covenants. Yet scholars still cling to the notion that μὴ μνησικακεῖν somehow constituted a law against partisan lawsuits and that παραγραφή was the instrument to enforce that law.

From such assumptions, scholars in the early 1800s, particularly German scholars, concluded that παραγραφή as a "procedural objection" was itself given a separate trial; and if the παραγραφή was rejected at its own hearing, then the main issue—say, Did Phormio embezzle?—proceeded to trial in the usual way. This two-trial model is still almost universally accepted, despite the arguments of the extant speeches: The speeches all argue as though the παραγραφή hearing must also decide the main issue. And every case involves a dispute over some prior decision, the binding clauses of a contract or covenants of release and quittance.

Emphasizing these features, Ugo Enrico Paoli defied the Germanic two-trial model and contended that the παραγραφή hearing was decisive in itself.[39] The trial is not just about procedural hurdles and jurisdictional distinctions. By παραγραφή the defendant argues that the plaintiff's claim

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lian *Constitutions* and, consequently, would have surely referred to the authentic text of the treaty (309).

[37] Cicero was thinking of his own predicament in terms of an Athenian parallel as early as 49, when in correspondence to Atticus he mentions the model of Thrasybulus (only to reject it). For influence on Nepos, cf. J. Geiger, "Cicero and Nepos," *Latomus* 44 (1985), 261–70. For Cicero's role introducing *amnestia* in Latin and the later tradition, cf. Val. Max. 4.1(ext).4: *plebis enim scitum interposuit, ne qua praeteritarum rerum mentio fieret. haec obliuio, quam Athenienses amnestian uocant.* Orosius 7.6.5: *Atheniensium amnestiam quam quidem Romae inducere . . . senatus Cicerone suadente temptaverat.* Vell. Paterc. 2.58: *et illud decreti Atheniensium celeberrimi exemplum, relatum a Cicerone, oblivionis prateritarum rerum decreto patrum comprobatum est.* Cf. Plut., *Cic.* 42; *Caes.* 67; *Ant.* 14.2; *Brut.* 19.1; *Moralia* 814b.

[38] Especially influential in this regard was R. Großer, *Die Amnestie des Jahres 403 v. Chr.* (Minden, 1868), 38–40. For the slow acceptance that there was no decree of amnesty at Athens, see above, n. 13.

[39] *Studi sul Processo Attico* (Padua, 1933), 77–116.

is "extinguished"; if he can not prove that the plaintiff's claim is invalidated by some prior decision or limit, then the defendant's παραγραφή is rejected and the plaintiff's claim is confirmed. This seems sensible. After all, the Athenian jury did not vote on legal niceties; they voted for one litigant or the other. But even Paoli could not quite free himself from procedural contortions. As much as he insisted on "indivisibility" of the suit, he settled on what we might call "the two-verdict theory": After the debate is done, the jurors vote once on the παραγραφή and then if the παραγραφή is rejected, they have to vote again on the plaintiff's claim.

The scholarly verdict is in: "Paoli's hypothesis . . . was demolished by Wolff."[40] That is to say, Wolff's defense of the two-trial model has prevailed, largely by sheer weight of his considerable authority, certainly not by any evidence. There is no single indication or suggestive allusion to a further trial on the original complaint that should follow a rejected παραγραφή. That silence might mean nothing were it not for the fact that many of the speeches do refer to further remedies: What comes next? What recourse is there beyond this hearing? Can the witnesses be prosecuted for false testimony?[41] Can we prosecute the witnesses who were summoned but failed to appear?[42] If the main issue were properly reserved for a separate hearing, surely the plaintiff would say so: Reject the παραγραφή and let the case go to trial.[43] There is never any suggestion of such a strategy.

Much of Wolff's analysis of the extant speeches consists in arguing away the obvious implication that the case at hand will decide the matter once and for all. Having imposed a distinction between procedure and substance, reserving the latter for the hearing-in-chief, he then discounts as distortion or evasion most of what the litigants say to the contrary. This proceduralist approach ultimately fosters the opposite assumptions: Athenian litigation is a social drama of endless recourse and few rigorous distinctions; in any given instance the trial is about anything and nothing

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[40] Thus Todd, *Shape of Athenian Law*, 138; similarly D.M. MacDowell, *The Law in Classical Athens* (Ithaca, 1978), 214–17.

[41] Dem. 33.37–38; 34.46.

[42] Dem. 32.30.

[43] Plaintiff has no further recourse if suit is rejected in this jurisdiction: 34.45 and 35.47. After his case against Phormio was quashed by παραγραφή, Apollodorus prosecuted Stephanus for testimony he had given in the παραγραφή. If a rejected παραγραφή should have been followed by a separate trial on the main issue, Apollodorus would surely have mentioned it as a further instance of justice denied, esp. at [Dem.] 45.40–52, anticipating the claim that Stephanus' testimony was relevant to the main issue, not the παραγραφή. Instead, he recognizes that arguments on the factual issues are standard in special pleas (52).

in particular. In many instances, it is because the proceduralists have insisted upon a rather adventitious model of Athenian justice that the social dramatists can discover no defined issue and no end to the dispute.

From the extant speeches, I conclude, to the contrary, that the *παραγραφή* frames the dispute in a definitive form, for the jury to answer both the plaintiff's claim and the defendant's, by one verdict, not two.[44] As we shall see in the next section, this solution is also indicated in later rhetorical theory—for what such testimony is worth. In the vast literature of issue theory there is also much confusion, and some of it found its way into testimonia on the law. That tainted testimony has influenced the prevailing procedural model. Thus, in concluding that fourth-century *παραγραφή* was restricted to narrow procedural issues, Wolff put much faith in Pollux, who wrote in the second century A.D. on key terms of rhetoric and style.[45] Pollux begins quite credibly, "*παραγραφή* is . . . when defendant claims that the suit is not actionable, as already decided in court or in arbitration or subject to release or beyond the statute of limitations." But then he turns to some examples: "it is a case for *γραφή παρανόμων*, not *εἰσαγγελία*; . . . or it is a case for the Palladium, not the Areopagus." At Athens, where these procedures belong, *παραγραφή* was not a viable maneuver in any of these instances. The emphasis on questions of jurisdiction is especially suspect. As we shall see, Cicero, again, seems to have contributed much to our confusion. I now turn to a consideration of *μετάληψις* and later theory.

As a distinctly "procedural exception," *παραγραφή* belongs to issue-theory as it developed in the centuries after Hermagoras. It is not a very apt characterization of the surviving speeches; and it is certainly not a convincing reconstruction of the issue that Hermagoras defined. By the prevailing view, however, *παραγραφή* is directed to the formal requirements of procedure: It is an objection to the plaintiff's standing or the competence of the court, to a violation of time limits or of other statutory restrictions upon how a claim should be prosecuted; it has nothing to do with the substance of the claim. But that very distinction between form and substance is problematic in the realm of Athenian law and the ways of justice that prevailed in the Hellenic world at large. In regard to this particular issue, the surviving testimony itself suggests that lawyers

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[44] Suggested by Rodolphe Dareste, *Plaidoyers civils de Démosthène*, vol. 1 (Paris, 1875), xx.

[45] Pollux 8.57: *Παραγραφή . . . ὅταν τις μὴ εἰσαγώγιμον λέγῃ εἶναι τὴν δίκην ἢ ὡς κεκριμένος ἢ διαίτης γεγενημένης ἢ ὡς ἀφειμένος ἢ ὡς τῶν χρόνων ἐξηκόντων ἐν οἷς ἔδει κρίνεσθαι, . . . οἷον οὐκ εἰσαγγελίας ἀλλὰ παρανόμων, . . . ἢ ὡς οὐ παρὰ τούτοις κρίνεσθαι δέον, οἷον οὐκ ἐν Ἀρείῳ πάγῳ ἀλλ' ἐπὶ Παλλαδίῳ.* Cited by Wolff, *Attische Paragraphe*, esp. 8–9 with nn. 4–6.

and rhetoricians in the Roman tradition tended to presume a division between issues of substance and procedure where the Greeks of an earlier era may not have recognized such a distinction quite so readily or in equivalent terms. And modern historians of the ancient law, primarily scholars trained in Roman legal thinking, understandably tend to impose that basic structure where it may not belong.

The testimony on *παραγραφή* and *μετάληψις* is a case in point, as we see in the following sections. First, rhetoricians in the Roman tradition evidently found the rest of Hermagoras irresistible but the fourth and defining issue alien and all but useless. They tried to make it conform to their needs and their assumptions. What emerged was a fabric of Roman adaptations. Secondly, we are fortunate that there was also a rival tradition, vigorous among the Greeks and not altogether lost in Latin, which seems to have adhered more faithfully to the teachings of Hermagoras. In some rare instances these latter-day Hermagoreans actually pursued the matter back to the Attic model. Guided by such authority, and largely indifferent to Cicero's quarrels, these late commentators defined *παραγραφή* as a separate issue with its own subdivisions, and among these we find a close approximation to the defining principle of the historical procedure. I will now examine Cicero and the Latin tradition.

In the mainstream of rhetorical theory, from Cicero through Quintilian to the Late Empire, *μετάληψις* was much maligned. Cicero in his first dealings with Hermagoras, in *De inventione*, seems to express a general frustration with the issue that the Romans rendered *translatio:*[46] "it is a question of who should prosecute or against whom or by what method or in what court or by what right or at what time or any question at all of alteration or defect in the lawsuit."[47] It seems to be about nothing or anything at all. In the second book, where Cicero illustrates each issue more fully, he manages to find some use for *μετάληψις*, focusing on the one objection for which he could actually find a meaningful illustration: the challenge to jurisdiction, *exceptio fori.*[48] In his example, a case of mayhem

[46] As Quintilian explains, 3.5.59, *De inventione* was the product of early study; any blame belongs to the source that young Cicero followed.

[47] *Inv.* 1.11.16: *aut quem aut quicum aut quomodo aut apud quos aut quo iure aut quo tempore agere oporteat quaeritur aut omnino aliquid de commutatione aut infirmatione actionis agitur.* His criticism in 1.12 is apparently due to conflation in his source: see Lucia Calboli Montefusco, "Der Einfluß der peripatetisch-akademischen Lehre auf Ciceros rhetorische Schriften," *Wiener Studien* 106 (1993), 103–9; cf. Antoine C. Braet "Variationen zur Statuslehre von Hermagoras bei Cicero," *Rhetorica* 7 (1989), 239–59.

[48] *Inv.* 2.19.57–59, explaining that most of the exceptions suitable for *translatio* are de-

is arguably not a matter for summary judgment before the *recuperatores* but a crime for the court of assassination.

Considering such treatment, it is not surprising that by the time it reached third-hand authorities such as Pollux, παραγραφή was especially associated with questions of jurisdiction.[49] Of course, the rhetorician's crowning example shows that he has wandered off into Sophistopolis. Athenian homicide trials were not subject to παραγραφή. Pollux obviously thought that παραγραφή must apply because murder figures so prominently in the hypotheses of issue-theory—including Cicero's one good example.[50] In Roman terms such procedural obstacles are *exceptiones* or *praescriptiones;* and, as Cicero tells us, these are matters ordinarily disposed of by the praetor *in iure* and not decisive at trial.[51]

In this and other respects, Hermagoras sometimes seemed obsolete to the Romans. He was most criticized for the very innovations that had made his system so influential. Yet the features of the Hermagorean scheme that roused the young Cicero to the greatest pitch of indignation were, in fact, not the work of the master, but a hopeless conflation by the intermediary that Cicero followed and never entirely corrected. Thus, he railed against the distinction of abstract questions, *theses*, from fully articulated cases, *hypotheses*, because his source had treated the *theses* as philosophical top-

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cided by the praetor *in iure.* The one productive use, *exceptio fori*, is illustrated in sec. 60: *Non enim oportet in recuperatorio iudicio eius malefici, de quo inter sicarios quaeritur, praeiudicium fieri.*

49 Despite the testimony of Pollux, there is no evidence that *exceptio fori* was a proper basis for Athenian παραγραφή (unless we insist upon Lys. 23). Wolff (99–101) finds an approximation to *exceptio fori* in Dem. 37.33: οἱ δὲ νόμοι καὶ τούτων διδόασι τὰς παραγραφὰς ἀντιλαγχάνειν, περὶ ὧν οὔκ εἰσιν εἰσαγωγεῖς. As Wolff himself recognizes, this statute is not a law for challenging suits in the wrong jurisdiction but for challenging lawsuits for which there is *no* jurisdiction. At trial one can certainly argue that the case is being prosecuted before the wrong court (cf. Ant. 5); but the only bar to litigation on that count was for the magistrate to "strike" the suit (διαγράψαι, as in Lys. 17.5).

50 Of course, the division of homicide courts at Athens suggests such a framework. See my discussion of the *Tetralogies* as illustrating a division of issues, *Rhetoric and the Law of Draco*, esp. 177–79; cf. Russell, *Greek Declamation*, 17. Cicero's example is curiously parallel to the objection in Ant. 5 (by "warrant and arrest" to the Eleven rather than δίκη φόνου at the Areopagus), which the hypothesis descibes as argued παραγραφικῶς.

51 *Inv.* 2.20.57. See W.W. Buckland and Peter Stein, *A Text-book of Roman Law*, 3rd ed. (Cambridge, 1963), 648–57; H.F. Jolowics, *Historical Introduction to the Study of Roman Law*, 3rd ed. (Cambridge, 1972), 206–8. The question of *whether* an exception would be added to the formula was decided by the praetor; in some cases the exception was simply denied. In those cases where the exception was granted, it was added to the formula as a subordinate condition: "if it appear that," for instance, the action is not barred by prior agreement (*exceptio pacti*), as in Gaius, *Inst.* 4.119.

ics, borrowing from Aristotelian and other schools.[52] Again, in regard to the third issue, which the Romans called *qualitas*, Cicero protested that Hermagoras had subdivided the issue according to the general divisions of rhetoric—deliberative, epideictic, and pragmatic, as well as judicial—which seemed perfectly absurd. On this point Quintilian gives us a reasonable explanation.[53] It does not undo the presumption that Cicero created and others accepted, that Hermagoras' scheme was built upon frivolous distinctions.

Most contentious of all was the singular invention of Hermagoras, the fourth issue, μετάληψις. It was not found in previous *technai* and was indeed found superfluous by many later writers.[54] Cicero himself saw little point in treating *translatio* as a separate issue; after all, his source had presented it as a list of procedural defects. Cicero concludes that others had faulted Hermagoras largely from envy, but not in error.[55]

In the mainstream Latin tradition the anti-Hermagoreans prevailed. The *Rhetorica ad Herennium* attests to a convenient and common solution, relegating *translatio* to the separate set of legal questions (1.22). And we find Martianus Capella in the fifth century A.D. following another, similarly dismissive approach:

> [*translatio*] is not an issue (*status*) in itself but a part of the issue of quality . . . quality is either a feature of the event in question or the lawsuit . . . of the lawsuit when there is a question whether the suit is to be allowed and judgment given. And since this "part of justice" is weighed by the standard of equity, we may treat it more precisely as a species of quality—what Hermagoras preferred to distinguish from quality as a new and separate issue as *translatio* or *praescriptio*.[56]

By referring to *praescriptio*, Martianus suggests that he (or his source) thought of the fourth issue much as Cicero did, as a forward-looking ob-

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[52] As Cicero objected in *De inventione* (1.8 = fr.6a), "Hermagoras seems to pay no attention to what he says nor comprehend what he intends, where he divides the orator's subject matter into *causa* and *quaestio*"; abstract questions "upon which . . . the philosophers have exercised their greatest talents . . . he seems to assign to the orator as mere trivialities."

[53] Quintilian, *Inst.* 3.6.56–59. Cf. Matthes, "Hermagoras," 150–51, suggesting that the confusion arose from a digression on πραγματική in treatment of the third issue.

[54] Cic., *Inv.* 1.16; cf. Quint., *Inst.* 3.6.23–50, cataloguing various schemes for division of issues.

[55] *Inv.* 1.16: *multi reprehenderunt, quos non tam imprudentia falli putamus—res enim perspicua est—quam invidia atque obtrectatione quadam impediri.*

[56] Mart. Cap. 5.444, 453(=fr.17b). See Buckland-Stein, *Text-book*, 648–49; cf. Paoli, *Studi sul Processo*, 118–20, on the supposed connection between *praescriptio* and παραγραφή.

jection—to put off a claim that might better be decided at a further hearing—rather than a claim of estoppel from some prior decision.

Quintilian gives us a more penetrating analysis (3.66–79), where he tries to correct a misconception from his own earlier lectures, and succeeds in justifying Cicero's complaint. Quintilian makes better sense of *μετάληψις* by emphasizing the distinction between "issues" (*status*) and "questions." In his earlier lectures Quintilian had remarked that cases involving *translatio* (=*μετάληψις*) are almost always better defined by another *issue;* for this reason, he notes, some rhetoricians dispense with it altogether. But, of course, legitimate *questions* of this type do arise in "almost every case where a plaintiff is said to have failed on a formality." Such are cases where it is disputed whether this plaintiff has the right to litigate at all, or with this defendant, or by the statute that he invokes, or before the court that is given jurisdiction, or whether the case falls within the prescribed time limit. He is referring to the same list of procedural criteria that Cicero used. But Quintilian hastens to add that these points of dispute are all subject to challenge or "transfer" *because of another case* (3.69–70). A dispute over whether plaintiff should sue for his deposit before the praetor or consul reduces to a prior question of the sum of money at issue. Above a certain amount, the case goes to the higher magistrate; it is thus an issue of fact (how much money was actually given). Others are purely questions of law. Among the latter he mentions the *praescriptiones*—"in which *translatio* is most obvious"—questions of legal definition and matters of letter and intent of the law. A true *issue* arises from a distinct *question* proper to it; but, in all these instances, the matter for "transference" is not a question proper to the case at hand. *Translatio* involves a *prior question* giving the litigant some grounds for objection in a later case; it is not itself an *issue*, properly speaking.

Essentially the *issue* should proceed from the *question* proper to that case, not from some prior and extraneous matter. Quintilian valiantly attempts to convey this distinction with some simple examples (3.73–76). It is one thing to argue over the fact of a homicide: "You killed him—No, I did not kill." It is quite another to argue over the very right to prosecute: *Habeo ius actionis—Non habes.* The latter is not the *question* from which the *issue* arises. It is properly a dispute about a prior event, not about the case at hand; it is a matter of the magistrate's decision to allow the plaintiff's claim, not a matter of the merits of that claim at trial. Quintilian then adds some examples for properly legal questions (not all yielding an *issue*). The last example is the most helpful: A defendant challenges the plaintiff's right to prosecute on the grounds that he has been disfranchised or

disqualified. In such a case, the challenge to the plaintiff's competence would amount to a secondary question on a prior fact, not the issue for trial; everyone agrees, in any single case there may be various secondary *questions*, but only one *issue*.[57]

Quintilian's reasoning is quintessentially Roman: Questions that belong to a prior dispute are incidental and subordinate, relegated to conditions in the formula. Athenian law—and one can reasonably suppose, other Greek law in the orbit of Athens—did not formalize that distinction. The very question of whether an old dispute is over and done with, disposed of by some previous decision or commitment, would often be crucial to the dispute at a later trial. The Athenians themselves acknowledged this open-ended way of justice and apparently felt it had some social value.[58] They also recognized that it invited abuse. Such abuse required its own remedy. This, as I argued earlier in this paper, is the original function of *παραγραφή*: It was an instrument of estoppel. And here, in the tortuous analysis of Quintilian, we can see that much of his difficulty—and Cicero's—is simply that this kind of dispute was alien to the Romans.

But among the later witnesses in Latin we have surprising testimony to such a principle in the work attributed to Augustine.[59] This brief account appears to follow Hermagoras closely, and it gives a singular insight, unique among the Latin writers, on the nature of *μετάληψις* (§10 = fr. 13c):

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[57] Quint., *Inst.* 3.91: *Hoc inter omnes convenit, in causis simplicibus singulos status esse causarum.* Not all agreed: The later Greek rhetoricians recognized compound issues; see following discussion.

[58] For "re(dis)tribution," see Osbourne, "Law in Action," 42–53. Abuse of this open-ended litigation lies at the heart of the elite complaint in Isoc.18.1–3 (see above). We have a special case in the speech of Hyperides' *For Euxenippus*, which indeed appears to be about anything and nothing in particular: Euxenippus was impeached for what he says he saw in a dream.

[59] The authorship remains doubtful; cf. Matthes, "Hermagoras," 104. It is treated as a genuine early work of St. Augustine by Karl Barwick, "Augustins Schrift De rhetorica und Hermagoras von Temnos," *Philologus* 105 (1961), 97–110, arguing that the treatise attributed to Augustine is substantially derived from Hermagoras; cf. his articles "Zur Erklärung und Geschichte der Staseislehre des Hermagoras von Temnos," *Philologus* 108 (1964), 80–101, and "Zur Rekonstruktion der Rhetorik des Hermagoras von Temnos," *Philologus* 109 (1965), 186–218. Barwick's judgment is followed by O.A.L. Dieter and W.C. Kurth, "The *De Rhetorica* of Aurelius Augustine," *Speech Monographs* 35 (1968), 90–108; and favored by Maria Bettetini, *Aurelio Augostino. Il Maestro e la Parola* (Milan, 1993), 127–28.

> About the fourth issue, there is much controversy. . . . For most authorities deny that it is a viable issue, since its effect is to bar the matter from coming into question at all. But the authority of Hermagoras is preeminent, and he regards it as an essential issue of the utmost importance, much invoked in court, and applied even at the outset in other issues, if the case permits. For nothing is of such advantage to those threatened with judgment as to deny judgment. . . . [And] since there are always (some) grounds to bar the suit, that very dispute, in which one party calls for trial and the other rejects it, constitutes an issue. This sort of dispute Hermagoras terms μετάληψις, a few of our Latin authors have called *reprehensio*, but most have called *translatio*, both for good reason . . . those who called it *translatio* [do so] because the defendant may not bar the suit altogether, but to exclude the case at hand he may refer the matter to another type of judgment, *either one already given or one yet to come*.[60]

The last sentence suggests that Hermagoras formulated μετάληψις with two alternatives: The suit may be barred *either* because of a past decision *or* with reference to a decision yet to be given. The latter suggests the kind of procedural exceptions that most impressed Cicero and Quintilian, matters for "transferring" the case to another setting. This is the *pro*spective *translatio*, envisioning a further hearing, that prevailed from Cicero to Martianus. In Roman procedure, it was the one aspect of the issue that opened some slim avenues to argument. But among the Greeks the first alternative prevailed; and that is probably because this *retro*spective approach—looking back to a prior decision that closes the case—was a truer representation of the Athenian model. This will be clear in the following discussion when we examine Hermogenes and the Hermagorean tradition.

Thus, Hermogenes defines μετάληψις as an issue apart from the others: It arises from the very question "whether the dispute should come in."[61] As he explains, such cases are not a matter of "whether [it happened], as in στοχασμός, or what it is, as in ὅρος, or what sort, as in the others, but this very question, whether there should be an inquiry at all; for μετάληψις is παραγραφή." He distinguishes two types: the documentary and non-

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[60] For the last phrase, *aliut genus iudicii . . . vel habitum iam vel futurum*, Dieter and Kurth, "*De Rhetorica*," 101, render "another kind of court, either *now in session* or to be convened in future." Bettetini, *Aurelio Augostino*, 143, gives better sense: "un altro genere di processo, o *già disposto* o da predisporre."

[61] *Peri Staseon* 42.5–43.7 (Rabe): εἰ δεῖ τὸν ἀγῶνα εἰσελθεῖν. Heath, *Hermogenes*, 35, renders "whether the case should be allowed to come to trial."

documentary. In his formulation of the common principle and these two categories, he invites the objections of later commentators who seem, as we shall see, preoccupied with a simpler distinction. But despite their differences, Hermogenes and his successors largely agree upon the prevailing character of *παραγραφή* as a challenge to the suit based upon some prior decision. The trial by *παραγραφή* will often encompass a substantive issue of fact or circumstance, but the case turns upon the crucial question of whether that claim is already decided.

The documentary type takes its question from some legal instrument (*ῥητόν*);[62] it is essentially "an exclusion of the main claim (*εὐθυδικία*) by *παραγραφή* based upon a legal instrument." The example he gives here, in his initial exposition, is crucial to later illustrations: Relying on the rule against double jeopardy—*δὶς περὶ τῶν αὐτῶν δίκας μὴ εἶναι*—a man once acquitted of homicide protests against a second prosecution, although the god himself has called him a killer.[63] The question of fact, whether he is the killer, comes in as a secondary matter, but the pivotal question is "letter and intent" of the law itself—hence the designation "documentary."

The non-documentary type has much the same basis—"an exclusion of the main claim by *παραγραφή* based upon a legal instrument." Here, however, the question at issue is not about the instrument itself but about the actual offense, "not about the *ῥητόν*, but about some aspect of the *πρᾶγμα*—the place or time, person, reason, or manner." As an example of objection as to place and time, he cites the husband who caught the adulterers in the act and killed the man but at first spared the wife; he later discovered her mourning at the lover's tomb and killed her on the spot.[64] The question at issue is whether the husband's license to kill extends to this place and time, remote from the original provocation.

These initial examples seem straightforward enough. But Hermoge-

[62] The term *ῥητόν* refers to any legal instrument or the like, such as "laws, covenants, decrees, letters, edicts." *Peri Staseon* 39.22–40.1 (Rabe): *ῥητὰ δὲ λέγω οἷον νόμους, διαθήκας, ψηφίσματα, ἐπιστολάς, κηρύγματα ὡρισμένα, πάντα ἁπλῶς τὰ ἐν ῥητοῖς.*

[63] Illustrating the use of "exception," *παραγραφικόν*, in case of conjecture (*στοχασμός*), he uses the same example: A man tried for homicide is acquitted but later consults an oracle and the god replies, "I give no answer to murderers"; on this evidence he is brought to trial but will plead that "the laws prohibit a second trial on the same charge" (*Peri Staseon* 44.15–20 [Rabe]).

[64] This is but one of several variations on the objection to time, place, or purpose. Sopater, *Division of Questions*, *RG*, vol. 8, 252, is perhaps the most ingenious: The husband first killed the wife but not the lover; at trial he claimed he *had* killed the lover, and challenged his accuser to produce the victim alive; the court granted a recess, and when the adulterer was brought forward, the husband then killed him.

nes later gives a more detailed demonstration of μετάληψις, and here he adds a distinction that may prove elusive, for now he tells us that documentary μετάληψις, equivalent to παραγραφή, is a "complete" defense.[65] By "complete" he seems to mean that the defense quashes the case absolutely rather than seizing upon a particular defect (such as the problem of time and place in the last example). But his new example for this "complete exception" leaves much to the imagination: Given a law that anyone opposing new legislation must do so within thirty days, a poor man who served abroad as ambassador returns to find that a law has been passed excluding the poor from political rights. The thirty-day limit is past, but our civic-minded pauper nonetheless challenges the law, presumably by a procedure like the γραφὴ παρανόμων at Athens. To suit his distinction, Hermogenes seems to be treating the pauper-ambassador as a defendant, because he is defending himself against a punitive measure. Against the objection that the time limit is passed, our "defendant" will argue that the intent of the law was not to penalize those who serve on embassies. And presumably this would also be the basis of his "complete" defense, that the older law, by its civic intent, invalidates the new measure barring the poor from office.[66]

As an example of the non-documentary type, we are now given the case of the hero who is rewarded with the death of any citizen he may choose; he names a victim whom he has already slain. Then when he is charged with murder, he objects that he can not be held accountable for an act that the people had already decided in his favor. As an illustration of the non-documentary type, the debate focuses not upon the legal instrument itself but the time and circumstance of the killing: Does this particular case come under the decree?

In his treatment of both types Hermogenes is faithful to a fairly straightforward principle, that παραγραφή looks to a prior decision to quash the case at hand. He does not envision a double trial, with one hearing for a procedural issue and a later hearing for the substantive claim.

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[65] As Heath renders it, "a complete procedural exception," *Hermogenes*, 35; on the distinction of complete and incomplete arguments, see 40–41.

[66] As Syrianus points out (see below), this case would also make a suitable hypothesis for the non-documentary type, for the advocates of the new law attack the pauper-ambassador on the grounds that he has violated both the time-limit and the new restriction against the poor exercising citizen rights. Complete exception ordinarily challenges the case altogether, whereas incomplete exception is based upon some particular defect of timing, competence, or other requirement; cf. Heath, *Hermogenes*, 135, citing Syrianus 2.158–59. *Ne bis in idem* (δὶς περὶ τῶν αὐτῶν δίκας μὴ εἶναι) is the prime example of such complete exception.

But Hermogenes' theorization was sometimes too subtle for his commentator Sopater,[67] for Hermogenes had treated both types of *μετάληψις* as essentially issues of admissibility, "whether the dispute should come in." The distinction between documentary and non-documentary types was a matter of whether the defense relies upon the instrument (law or previous decision) absolutely, to quash the suit outright, without delving into questions outside the instrument, as to whether it applies to the time and place of the offense (or the like). But Sopater was baffled by this distinction: Hermogenes was wrong to suppose that both types of *μετάληψις* arise "when there is a question whether the dispute should come in":[68]

> Here lies the greatest mistake. For not every *μετάληψις* is about this, but only the "documentary" type. . . . the "non-documentary" is always a matter of the "main claim" (*εὐθυδικία*); the inquiry is not about admissibility of the charge but about the circumstance of the act. For if I say, "it is permitted to slay the adulterer and the adulteress; Orestes slew the adulteress and stands trial," the inquiry is not about admitting the case, but it "takes up" the "main claim" itself,[69] [arguing] from the person, that "being her child you must not slay her."

In other words, the kind of case that Hermogenes treated as non-documentary and not as a "complete exception," because it focuses on per-

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[67] He explains Hermogenes' distinction between *παραγραφή* and *μετάληψις* (*RG* 5.192.24–193.9). The identification of this Sopater with the author of *Division of Questions* is deemed "not likely" by D. Innes and M. Winterbottom, *Sopatros the Rhetor* (London, 1988), 1 with nn. 9–10. Similarly Heath, *Hermogenes*, 94–95, 105–7, cites passages where the commentator seems at odds with *Division of Questions* on certain headings and examples. But in the commentary the author sometimes explicates what he challenges elsewhere. And in *Division of Questions* we find similar discrepancies, such as the two treatments of the vengeful wife: In the second instance (*RG* 8.384) he declares that *μετάληψις*, which he had used in the first instance (8.247–52), is wrong. Kennedy, *Greek Rhetoric under Christian Emperors* (Princeton, 1983), 104, found it "probable that these are all writings of one late Fourth Century Athenian rhetorician," and he may yet be right.

[68] *RG* 5.109.27–110.15, beginning, *τὴν δὲ μετάληψιν . . . ὅταν ζήτησις ᾖ περὶ τοῦ εἰ δεῖ τὸν ἀγῶνα εἰσελθεῖν, ἐνταῦθα μέγιστόν ἐστι τοῦ τεχνικοῦ πταῖσμα* (109.27). Again, in regard to Hermogenes' formulation, *ἡ δὲ ἄγραφος . . . ἀπαγωγὴ τῆς εὐθυδικίας*, Sopater says, "he persists in the error" (111.15).

[69] *RG* 5.110.5–7: *οὐ περὶ εἰσόδου ἐστὶν ἡ ζήτησις, ἀλλὰ περὶ αὐτῆς τῆς εὐθυδικίας μεταλαμβάνεται.* For *μεταλαμβάνεσθαι*, I use the neutral translation "take up," to allow either the sense of reversal or succession, of taking up one thing after or in place of another. I suspect the image is borrowed from wrestling; see below.

son or circumstance, was really a matter of the "main claim." In such cases Sopater could not quite see the difference between the issue of admissibility and the substance of the claim:

> [Hermogenes] should not have defined the issue as he did, but said, "*Μετάληψις* is . . . *either* regarding the question of whether the dispute can come in, *or* about some aspect of the circumstances." Whereby he would have embraced both the non-documentary, which has its inquiry regarding the main claim . . . and the documentary, which is a complete exclusion of the main claim.

Sopater here insists upon a simpler distinction: The documentary *μετάληψις* (= *παραγραφή*) is a dispute about whether the claim can come in; but the non-documentary type, *μετάληψις* proper, deals with the "main claim" itself, the substance of the offense. It is not a distinction that he will always adhere to so strictly. But his quibble is significant for our inquiry because of the cases he then cites. Sopater follows up his correction of Hermogenes with two examples from the Demosthenic speeches for actual cases of *παραγραφή* (Dem. 36 and 37), and here he seems to acknowledge that even *παραγραφή* (supposedly a "complete exclusion of the main claim") also encompasses both issues, admissibility and substance:[70]

> This documentary *μετάληψις* (= *παραγραφή*) is occupied with two issues: one prior question of law, whatever it should be, and the main claim (*εὐθυδικία*) as a second issue that arises from the nature of the case. Thus, in the *παραγραφή For Phormio*, the second issue is a question of fact, the very question of the main claim, whether Phormio embezzled from the bank or not. In the case *Against Pantainetus*, [the secondary issue] is a question of shifting the blame (*μεταστατική*) upon Evergus.

He brings forward these same examples again where he comments on Hermogenes' more detailed demonstration of *μετάληψις*, and here the added details are instructive:[71]

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[70] *RG* 5. 110. 24–111.1.

[71] *RG* 5.191.5–18, beginning *ἡ μὲν οὖν παραγραφὴ ἐκβολή ἐστι τελεία τῆς εὐθυδικίας καὶ τὸν ἀγῶνα ἀντιστρέφει.* Two errors remain uncorrected in Walz' text. At. 191.3–4, the MSS have *ἡ μὲν παραγραφὴ ἐξ ἀγράφου διισχυρίζεται, ἡ δὲ μετάληψις ἐξ ἀγράφου*—both *non*-documentary. Walz corrects the second instance to *ἐγγράφου*, but it is surely the first instance that requires the change. At 191.17, the MSS have *Μνησιβούλου* as the defendant; the right name is *Νικοβούλου*. It is clear elsewhere that Sopater would know this.

> *Παραγραφή* is a complete rejection of the main claim (*εὐθυδικία*) and *it reverses the dispute.* It has two questions, invariably: The first question is treated according to one of the legal issues; the other is the very matter brought forward [by the plaintiff]—the main claim—which, indeed, will be developed according to another corresponding issue. . . . Thus, in the *παραγραφή For Phormio*, the first question is legal (*νομικόν*); the second, conjecture on the fact (*στοχαστικόν*), as to whether or not Pasion had twenty talents in the bank. Again, the *παραγραφή* against Pantainetus has first a legal question and second a question of shifting the blame (*μεταστατικόν*), as [one partner] Nicobulus puts responsibility upon [the other] Evergus.

Here Sopater acknowledges that *παραγραφή* proper also takes up the dispute on the main claim. Earlier he has argued that *παραγραφή* is all about whether the claim can come in, but here he has to admit that the court case would actually comprise both issues, admissibility and substance. His difficulty points to a deeper problem: The very division into two questions does not really fit the historical examples. Such cases in court would inevitably resolve, in one hearing, both the question of legality and the matter for *εὐθυδικία* as one issue.

This interpretation of the two court cases is supported by the hypotheses of Libanius, who similarly sees argument on the main claim entering into the dispute on whether the case is closed:

> (i) Phormio enters a plea in bar based on the law demanding that suit not be allowed henceforth in matters for which one has given a release and made settlement once and for all. Yet the speaker takes up the main claim, showing that the bank did not contain the private funds of Pasion. This he did to strengthen the *παραγραφή*. (hyp. Dem. 36.3)
>
> (ii) Nicobulus enters a plea in bar of the dispute on one count, that the law demands that it no longer be permitted to bring suit in matters for which there has been release and quittance; on a second count, that the law expressly defines the jurisdiction for mining disputes. . . . But he has put the main claim in the midst of the case, where it is most effective, [arguing] that he, Nicobulus, was abroad when Pantainetus suffered the injuries for which he then brought suit against Evergus and now against Nicobulus. (hyp. Dem. 37.6–7)

Here let us take stock of the quarrel between Sopater and Hermogenes. The master had asserted rather loosely that μετάληψις of either type is a question "whether the dispute should come in"—whether the claim is even a matter open to dispute before the court or other deciding body. Sopater insisted that μετάληψις argues the main claim; and it is only the "complete" exception, παραγραφή, that argues the main claim should not come in. But later he has to acknowledge that even in παραγραφή proper the main claim *is* argued out, for such is the case in the παραγραφή speeches of Demosthenes (36 and 37), where Sopater finds, as Libanius confirms, that the main claim is disputed outright but the decisive issue is the very question of whether that claim is still actionable. In these two cases the defining issue is a matter of estoppel, barring the substantive claim (embezzlement or damage) by reference to a prior instrument (in each case, a binding release). Such cases as these are rightly distinguished as "complete exception" (unlike the cases that focus on the person, place or time); for the Demosthenic παραγραφαί reject the plaintiffs' claims outright as disposed of by a previous decision.

The category of "complete exception" only makes sense for this kind of case, where what is at issue is whether the plaintiff's claim has substantive merit beyond what was already decided by law or previous judgment. By the very nature of such disputes, the main claim must be argued out, if the judges are to determine whether the matter is already decided. Thus, the one verdict on the παραγραφή will decide the case either way: The judges will either rule that the matter is already decided and thus the claim fails; or the claim is not closed by the previous decision, in which case the plaintiff's right is valid by that very ruling.

The notion of a double trial appears only with "incomplete" exceptions, transferring the case to a later hearing. But the commentators must illustrate this transference with a dubious example: the famous case against Aeschines for wrongdoing on the embassy to Philip. The initial case brought by Timarchus is blocked by Aeschines' suit to disqualify the prosecutor as a former prostitute. In this instance the argument is entirely devoted to the question of disqualification and not the original complaint (wrongdoing on the embassy). It is thus an exception to the rule that μετάληψις of either type involves a dispute on the main claim. Timarchus is disqualified but another prosecutor proceeds, and it is only then, at the second trial, that the main claim is argued. Of course, this example that Sopater and others treated as παραγραφή in rhetorical terms was not a proper plea in bar—not a παραγραφή in the legal sense. And the confusion is indicative: Later antiquity evidently knew of no proper παραγραφή in-

volving such a double trial, with the plaintiff's original claim reserved for a later hearing. Syrianus, as we shall see below, describes a sort of double trial in some *παραγραφαί*, on the opposite principle: The dispute on the main claim comes first.

Taken together, Hermogenes' theorization and Sopater's "correction" suggest that the division between types of *μετάληψις* corresponds to this distinction: *Παραγραφαί* in the strict sense represent a "complete exception" based on some *past* decision that bars the case at hand absolutely; *μετάληψις* proper consists of "incomplete exceptions" looking to some *future* litigation, on grounds that the present action is defective in some particular and, therefore, judgment should be deferred to a suit in proper form. The latter, incomplete exception offered greater scope for useful arguments in the Roman world. The former had a greater importance among the Greeks, as illustrated by the actual speeches for *παραγραφαί*.

The later commentator Syrianus (fifth century A.D.) offers another practical distinction between the two issues, *παραγραφή* and *μετάληψις*: "The one is realized by the defendant; the other, by the plaintiff."[72] As we might deduce from the standard examples, *παραγραφή* is characteristically an issue defined by the defendant; *μετάληψις* takes its name from the plaintiff's response to the exception (2.152.19–153.3): "In the non-documentary [*μετάληψις* proper], the plaintiff makes use of some circumstantial objection against the *παραγραφή*; in the documentary type [*παραγραφή* proper] the defendant frames the issue." In other words, Syrianus suggests that the chief difference in practice is a matter of which adversary has defined the issue to his advantage: A defendant will try to pose a "complete exception" based on a legal instrument; the plaintiff will argue that the instrument (law or prior decision) does not apply to the particular circumstance.

Μετάληψις then is "an issue of some civil action . . . whereby the plaintiff concedes the nature of the act [as one defended by legal instrument] but seizes upon one of the circumstantial features" (2.153.7–10). The circumstantial aspects open to *μετάληψις* are five, as Hermogenes had noted: place, person, time, manner, and reason or cause (*αἰτία*). Syrianus then gives succinct illustrations of each, including the example of objection on timing that Hermogenes had used: the husband who killed his adulterous wife after the fact, as she wept at the lover's tomb.

But when he turns to the separate issue of *παραγραφή* itself, Syrianus

[72] 2.55.5–8 (Rabe), correcting Minucian's implication that he was the first to distinguish the two; cf. 2.151–52 (Rabe).

seems confused by the example that Sopater offered for παραγραφή as a theoretical construct, much as Pollux was misled by such constructions. For Syrianus insists "παραγραφή involves two disputes, the main claim itself and the one that gives rise to the παραγραφή" (2.157.4–9). And to illustrate the distinction, he takes up the case that Sopater had treated as an example: Aeschines challenged Timarchus' suit on the embassy, on the grounds that he should be barred as a former prostitute. In this case there is "one dispute regarding the embassy and another regarding the charge of prostitution," and the latter is brought to trial first, "as a matter of conjecture on the fact, without witnesses, *by way of* παραγραφή. After the defeat of Timarchus, the action on the embassy, itself a case of conjecture, went to trial" (2.157.9–17).

This appears to be the only case or at least the only kind of case known to the commentators where a so-called παραγραφή properly involves a trial previous to the main hearing. Again, as we saw in Sopater's treatment, this is not testimony on historical procedure: It is a rhetorical construct.

But the case of Timarchus against Aeschines apparently suggests an analogical theory on the original meaning of παραγραφή as a term of law and argument (2.157.18–158.12). Syrianus observes that παραγράφειν (the verb) is opposite to ἐγγράφειν, just as these terms are used in regard to qualification for the deme, the locus of citizen rights. The prospective member, asserting his right, enters his name in the roster, ἐγγράφειν. To challenge that right and exclude the claimant is παραγράφειν. The plea in bar is thus analogous to challenging the qualifications of a demesman—not simply disputing his claim on some particular matter but denying his very right to assert any claim at all. The description is full of agonistic imagery: The incomplete παραγραφή is a maneuver that wards off a blow; the complete παραγραφή throws the claimant from the arena like an outmatched wrestler.

It is perhaps a misleading analogy, if we are to understand that the παραγραφή is a separate hearing on the qualifications of a plaintiff, like the case of Timarchus. But it is a useful analogy if we look deeper into the social context. Παραγραφή, as Syrianus describes it in this context (2.157–58), is "an issue of civil action whereby the defendant takes his stand on the ground that the claim can not be brought in." The plaintiff seeks to bring in a claim to some right for the court to authorize, and defendant seeks to bar that claim, just as an opponent might seek to bar a newcomer from asserting his rights as a member of the community.

That way of framing the dispute would suggest that the one decision between the claimant and defendant will decide the claim once and for all,

for among the Athenians the *idea of the suit* is never fully abstracted from *what litigants do* to assert their claims. There is no magical wording, like the Roman formula, that takes precedence over what was actually done or intended. To speak of bringing in a δίκη or entering an ἀγών naturally means bringing the parties and the very properties in dispute before the court, physically or in token. To contest that right is not an abstract clash of ideas. It is a contest over whether that claimant has the right to assert his claim in the public arena: If that question is resolved in his favor, not only is the right recognized but the claim itself is authorized for him to execute.

Because a παραγραφή will also resolve a substantive "main claim," Syrianus sees such cases as argued according to the issue proper to that main claim: Thus, the priestess, once acquitted of impiety, is tried a second time for the same offense but now charged with pandering (προαγωγεία). She brings a παραγραφή, but the argument will follow the pattern of "definition." The case of the pauper ambassador who sued the law disfranchising him is properly argued κατὰ πραγματικήν, as an issue involving policy or public interest. The well-worn example of the killer who is first acquitted, then incriminated by the very word of god, at trial invokes the law *ne bis in idem* and argues the case "according to 'letter and intent'." And then we have this remarkable comment from Syrianus on compound issues in παραγραφαί and the sequence of court proceedings:

> On occasion the main claim (εὐθυδικία) is brought to trial [first] and *afterward*, separately, the dispute over παραγραφή [is brought to trial]; and other times the two disputes (ἀγῶνες) one for the παραγραφή, another for the main claim, are brought in *together*. (2.159.14–17)

Sometimes the two issues are argued together at the same trial—plea in bar plus some issue of fact or definition. Otherwise, the two issues are dealt with in separate trials (the first alternative), and in such cases *it is the main claim that goes first.*[73]

Here he is describing just the opposite scenario from the case of Timarchus against Aeschines. And from the following account it seems clear that what Syrianus meant was this: Some cases depend upon a prior suit which effectively decided the validity of the claim; once decided, that claim is not

[73] Cf. *Suda* π319 (Adler): "*Παραγραφή*—whenever one says that the matter of the claim has been brought to court previously and there has already been a verdict (εἰσήχθη πρότερον εἰς δικαστήριον, καὶ γεγένηται περὶ αὐτοῦ γνῶσις), and on this account there is no ground for judgment . . . one must read the laws that allow no further suit on the same claims."

at issue in itself; later proceedings focus on the legal question of whether that closed claim can be opened in another guise or by some further, unresolved implication. The court will decide essentially whether the suit is extinguished or estopped by the prior decision:

> In order to distinguish more clearly concerning "complete" and "incomplete" παραγραφή, we must recognize that "complete" παραγραφαί are those that arise on the basis of *claims already decided* and thus seek to throw out the main claim altogether, as in the case of the killer who stands trial a second time and the priestess [who was acquitted of impiety]. In these cases the defendant will make no defense against the pending charge [murder or pandering] but makes his entire judicial argument on the grounds that he is not subject to trial (κρίσις) a second time on the same charges. (2.159.18–26)

This, as I have argued above, is the nature of Athenian παραγραφή: The issue is whether the claim is quashed by a *prior* decision of council, court or binding commitment.

By contrast, " 'incomplete' are those cases when the παραγραφή arises from a legal instrument that aids the defendant, contested on one of the circumstantial aspects, either the person, as in the case of Timarchus, or time, as in the case of the pauper [ambassador] . . . , or jurisdiction of the court, etc." (2.159.26–160.6). It is only such cases that look to a *later* trial to decide the substantive issue; and, of course, in regard to such cases the commentators are speaking of παραγραφή as a theoretical construct, not an actual procedure.

The distinction between "complete" and "incomplete" παραγραφαί thus corresponds to a difference between practice and theory: The former looks back to a prior decision; the latter looks forward to some future trial. This appears to represent a fundamental division in the issue that goes back to Hermagoras, and it corresponds to a difference in historical procedure—whether the case is tried by παραγραφή proper or by ordinary proceedings. The "incomplete" exception, looking to a later trial, corresponds to the two-trial model of παραγραφή that Pollux imagined and modern scholars have followed. But it does not represent the Athenian procedure of that name. It is only the "complete" παραγραφή, as Hermogenes and Syrianus define it, that corresponds to the historical procedure of that name—a single hearing that decides the case once and for all.[74]

[74] Apsines 1.88 also seems to imply that there is no second hearing, separate from the παραγραφή, as Kennedy pointed out to me in a recent letter. Cf. Dilts and Kennedy, *Two Greek Rhetorical Treatises*, 104–7. The natural implication of Apsines' strategy is that defen-

The illustrations in late theory do not always maintain such distinctions, but the defining principle of the plea in bar—δὶς περὶ τῶν αὐτῶν μὴ εἶναι δίκας—is remarkably consistent. And, of course, the tales of adultery and murderous revenge provide endless variation on this theme. The son who slew the adulterer to oblige his invalid father will argue that the slain man was *already sentenced* by the law.[75]

The same principle applies in the case of the wife who killed the adulterous husband. A συνήγορος for the defendant speaks first: He tells of the woman's upbringing, how she was taught to respect the laws as the source of all blessings in society. Happy in this belief, she came to the fulfillment of those blessings and found a husband to father her children—only to discover in the end that he had broken that sacred trust and betrayed its very foundation. And so she acted in defense of the law. Then comes the παραγραφικόν proper: For the laws command the adulterer to be slain in the act. The laws themselves had already condemned him—τῶν νόμων αὐτῶν προκατεγνωκότων.[76]

It is this aspect of adultery and retributive killing that makes the scenario so productive in hypotheses for παραγραφή and μετάληψις. The Greek laws on sexual violation give the husband or κύριος an immediate right of self-help, and if he executes his claim properly, there is no legal recourse against him: The law has already given judgment against the adulterer. To the Greek way of thinking, the injury in itself incurs a kind of obligation—"a transaction without consent"—which carries the same implications of closure as would any binding transaction of the ordinary, consensual type.[77] When the husband or κύριος comes upon the intruder

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dant will argue both the plea-in-bar and the main claim and that this trial will decide the matter in lieu of trial on the main issue. Apsines also gives an ingenious hypothesis with the same implication (1.22, Dilts and Kennedy 82–83): Demosthenes first prosecuted Meidias for impiety and then brought suit for *hybris*, only to be met with the plea-in-bar, "according to the law that forbids a second trial on the same charges." The historical sequence is, of course, fictitious, but it is again suggestive that παραγραφή proper is based upon an earlier decision (τῇ προτέρᾳ νίκῃ).

75 *Division of Questions*, *RG* 8.262.14–15, προκατεγνωσμένου ὑπὸ τῶν νόμων.

76 *Division of Questions*, *RG* 8.247. The MSS read γνώμων, but Aldus' νόμων is surely right. In the case against the wife, the prosecutor will object to the role-reversal: The law intended for the husband to take vengeance, not the wife. The issue is thus μετάληψις with regard to the person. The wife will counter, "The law does not distinguish whether men or women should kill, but simply that the adulterer be punished."

77 Thus Aristotle, *EN* 5.2.13 (1131a) defines "voluntary and involuntary transactions," ἑκούσια and ἀκούσια συναλλάγματα: The former include buying and selling, rental agreements, loans and deposits; the latter include theft, adultery and murder. Cf. *EN* 9.1.9

in the act of sexual violation, the law grants him a license as binding as the release and quittance that cancels other obligations. The man who thus violates the *οἶκος* of another has by his very act endowed his killer with a prior claim that the laws have already judged valid.[78]

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(1164b 13–15): In some states there is no remedy for breach of "voluntary contract," *ἑκούσια συμβόλαια* (as opposed to *ἀκούσια*). Andocides 1.88 (above, n. 26) implies the same sort of formulation. For modern perspectives, see Wolff, *Attische Paragraphe*, 44; Steinwenter, *Streitbeendigung*, 103. On the multi-purpose "suit for damage," *δίκη βλάβης*, see Todd, *Shape of Athenian Law*, 279–83; the Greeks made no consistent distinction between tort and contract.

[78] We know, of course, that such cases could go to trial. In the case of Lysias 1, *On the Slaying of Eratosthenes*, the decisive issue appears to be essentially a question of fact: Was it a plot of entrapment? The indemnity in the law is open to objection on the time, place, or motive; it is thus a case for *μετάληψις*. For full discussion, see my *Rhetoric and the Law of Draco*, 282–99.

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II

The Orator in Action: Greece

CHAPTER 3

The Superfluous Bag: Rhetoric and Display in the Histories *of Herodotus*

by Sheila Murnaghan

In his relation to rhetoric, as in many features of his work, Herodotus is in the paradoxical position of seeming to have invented history and yet not to have actually written it, to have indicated the rules of what we consider to be historical method and yet not to have followed them.[1] Where the use of formal speeches is concerned, Herodotus' apparent failure to take advantage of his own invention is highlighted by the centrality of speeches in Thucydides' history and by Thucydides' notable success in integrating the public deliberations of historical agents into his narrative. Thus, Charles Fornara begins an account of "The Speech in Greek and Roman Historiography," in his general book on *The Nature of History in Ancient Greece and Rome*, by declaring that "Although it was Herodotus who introduced the direct oration into history, our proper point of departure is the well-considered decision of Thucydides to continue with its use."[2] Scholars have certainly seen that Herodotus was well aware of and responsive to the revolutionary developments in rhetoric of his time and place. In *The Art of Persuasion in Greece*, George Kennedy describes Herodotus as fully displaying what Kennedy, with his characteristic analytic clarity, labels the four signs of rhetorical consciousness: awareness of the formal structure of speeches, interest in etymology and word-play, use of antithesis and other sophistic stylistic features, and subtlety of argu-

[1] As François Hartog puts it, "In the last analysis, his position may be summed up in the following paradox: even though he is the father of history, he is not really a historian"; *The Mirror of Herodotus: The Representation of the Other in the Writing of History*, trans. Janet Lloyd (Berkeley, 1988), 379.

[2] Charles Fornara, *The Nature of History in Ancient Greece and Rome* (Berkeley, 1983), 143.

mentation.[3] And Herodotus' speeches have received some appreciative attention, often aimed at showing that he anticipates Thucydides more than has been realized.[4] But the variousness of the many speeches, both directly and indirectly reported, in Herodotus' vast work, as well as the complexity of their relationship to the narrative, makes it hard to reach that clear sense of a connection between the speeches and the author's historical method that leads Fornara to label Thucydides' use of speeches "well-considered."

Thucydides co-opts his speakers into his own enterprise, making their accounts of their circumstances and aims into building blocks of his own less partial exposition. His speeches and narrative complement and reinforce each other. As Virginia Hunter puts it, "Generally, this is the central feature of Thucydides' speeches, to anticipate the narrative in such a way that the latter provides confirmation that the plan or strategy, or the general reasoning on which it was based, was correct."[5] Herodotus, on the other hand, establishes less straightforward relationships between the speeches delivered in the course of his narrative and the events he narrates and between the persuasive efforts of his characters and his own project of conveying history. He is skeptical as well as appreciative of debate as a context for enhanced understanding; he is as likely to spoof the latest rhetorical techniques of his day as to exploit them for his own ends; and he several times associates his own outlook and purposes with instances of rhetorical failure.

A good illustration of this association between Herodotus' own perspective and unsuccessful rhetoric is provided by the debate that takes place at the beginning of Book 7 as part of Xerxes' momentous decision to invade Greece (7.8–11).[6] The episode represents a kind of travesty or anti-type of debate as a medium for arriving at well-considered decisions as the Persians attempt to employ this, for them, foreign mode of politi-

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[3] George Kennedy, *The Art of Persuasion in Greece* (Princeton, 1963), 45–46.

[4] See especially Liselotte Solmsen, "Speeches in Herodotus' Account of the Ionian Revolt," *American Journal of Philology* 64 (1943), 194–207, and "Speeches in Herodotus' Account of the Battle of Plataea," *Classical Philology* 39 (1944), 241–53; K.H. Waters, "The Purpose of Dramatisation in Herodotos," *Historia* 15 (1966), 157–71; Paavo Hohti, *The Interrelation of Speech and Action in the Histories of Herodotus* (Helsinki, 1976); Mabel Lang, *Herodotean Narrative and Discourse* (Cambridge, 1984).

[5] Virginia Hunter, *Past and Process in Herodotus and Thucydides* (Princeton, 1982), 290–91.

[6] For a detailed linguistic analysis of the speeches in this episode, see Johannes M. Van Ophuijsen and Peter Stork, *Linguistics Into Interpretation: Speeches of War in Herodotus VII 5 & 8–18* (Leiden, 1999).

cal action, with absurd results. Xerxes, having made up his mind to invade Greece, calls the leading citizens of Persia together, announces that that is what he intends to do and promises that he will reward the most eager and best-equipped participants. In closing, he declares that this is what must be done, but adds that he does not want to seem to consult only his own whim (*ἰδιοβουλέειν*) and, therefore, he will throw the whole matter open for debate: He places it *ἐς μέσον*, using an expression that evokes the egalitarian practices of the Greek city.[7] This invitation provokes, not surprisingly, a speech of sycophantic agreement from Xerxes' ambitious cousin Mardonius, followed by silence, since "nobody dared to put forth the opposing view,"[8] until Xerxes' uncle Artabanus speaks up to oppose Xerxes and Mardonius, only finding the courage to do so because of his relationship to the king. Artabanus' speech begins with an account of the value of debate, "My lord, without a debate in which both sides of a question are expressed, it is not possible to choose the better course."

Artabanus' opening endorsement of debate is as calculating and self-deprecating as Xerxes' invitation is disingenuous. It conveys a reminder that Xerxes himself requested the expression of opposition that will follow and hints that that opposition might be understood as part of a useful exercise, like one of the paired speeches of sophistic training, rather than as a true expression of Artabanus' views. But in the rest of the speech, Artabanus goes out of his way to identify himself with his position, challenging Mardonius to a kind of wager in which each would stake his own life and his children's lives on the correctness of his advice. And he expresses his view in ways that ally him with Herodotus himself, especially when he grounds his opposition to the expedition in a general vision of the role of the divine in human life:

> You know, my lord, that amongst living creatures it is the great ones that God smites with his thunder, out of envy of their pride. The little ones do not vex him. It is always the great buildings and the tall trees which are struck by lightning. It is God's way to bring the lofty low. Often a great army is destroyed by a little one, when God in his envy puts fear into the men's hearts or sends a thunderstorm, and they are cut to pieces in a way they do not deserve. For God tolerates pride in none but Himself. (7.10e)

[7] See *Histories* 4.161.3 and Marcel Détienne, "En Grèce archaïque: géométrie, politique, et société," *Annales (Économie, Sociétés, Civilisations)* 20 (1965), 425–41.

[8] English quotations from the *Histories* are from the translation by Aubrey de Sélincourt, revised with an Introduction and Notes by John Marincola (New York, 1996).

This statement echoes both Herodotus' own programmatic observation at the beginning of the work that "those [cities] which were great once are small today; and those which used to be small are great in my own time" because "human prosperity never abides long in the same place" (1.5) and the statement of the programmatic figure Solon that "God is envious of human prosperity" (1.32).[9] In addition, while all three speeches —those of Xerxes, Mardonius, and Artabanus—include an appeal to past experience, only Artabanus' use of history is informed by a vision like that of Herodotus. Xerxes sees in the past successes of his ancestors a pattern of expanding Persian domination that he must inevitably continue; Mardonius dismisses the threat of Greek resistance on the basis of a tendentious interpretation of his own earlier expedition, which is presented in a very different light in Herodotus' own account (at 6.43–45); but Artabanus adduces Darius' experience with the Scythians as a model for what might happen, using that episode as a paradigm much in the way that Herodotus himself does.[10]

Xerxes' response to this useful presentation of the opposing point of view is rage. "Artabanus," he says, "you are my father's brother and that alone saves you from paying the price your empty and ridiculous speech (ἐπέων ματαίων) deserves" (7.11). So much for Xerxes' understanding of the purpose of debate—but there then follows an astounding course of events. On reflection, Xerxes decides that Artabanus is right, changes his mind, and announces his change of mind to his delighted followers even though a dream has warned him not to. But he is unable to maintain this rational course because he is visited again by this dream, which threatens him if he does not resume the expedition. He then persuades Artabanus to take his place, and the same dream comes to Artabanus, threatening him and almost burning out his eyes with hot irons, at which point Artabanus agrees that the expedition is divinely sanctioned and abandons his opposition.

One function of debate in this episode is as a cultural marker. It represents a form of Greek political practice that Xerxes, as the embodiment of Persian tyranny, does not understand and, therefore, misuses. Xerxes' perversion of debate dramatizes the cultural misunderstanding—the failure to appreciate Greek customs, Greek fighting abilities, and the Greek

[9] This connection between Artabanus and Solon recurs at *Histories* 7.46, where Artabanus echoes Solon's statements about how death is preferable to life.

[10] On the role of the Scythian *logos* in the *Histories*, see Hartog, *The Mirror of Herodotus*, passim, and, especially, for its function as a paradigm of Xerxes' expedition, 357.

commitment to freedom which outweighs the Persians' numerical advantage—that allows Xerxes to undertake this doomed expedition. In this respect, it is echoed in a passage a little later in Book 7 (103) in which Xerxes uses an argument from probability—an argument based on what is *εἰκός* (or in Ionic *οἰκός*) to claim to the exiled Spartan king Demaratus, a wise advisor like Artabanus, that the Greeks can not possibly hope to defeat the Persians, especially since they are hampered by freedom: "But let me put my point as reasonably as I can (*φέρε ἴδω παντὶ τῷ οἰκότι*)—how is it possible that a thousand men, or ten thousand, or fifty thousand, should stand up to an army as big as mine, especially if they were not under a single master, but all perfectly free to do as they pleased?"

At the same time, the debate involving Artabanus actually seems, nonetheless, to work, although slowly, as a medium of rational persuasion, only to be overwhelmed by a divine destiny that is aligned with the inevitable impetus of Persian imperial expansion. Herodotus thus combines a sardonic commentary on the Persian character with an exposition of the divine forces that work through individual and national characters to shape the course of history. And, at this decisive moment in his narrative, he embeds his own analysis of the Persian expedition and of the reasons for its failure—expressly linked to his own vision of the cyclical pattern of history—through the speech of Artabanus, presenting his own analysis in a context that shows it to be at once persuasive and incapable of persuading.[11] In an episode that has been described as "a summary of the whole work,"[12] Herodotus draws on the motif of the ignored wise advisor, in the context of a doomed debate, to convey once again his melancholy point that it is impossible for people to put to good use the kind of understanding that a historian might attain, even if they try.[13]

Herodotus often seems more inclined to praise Greek customs and practices by showing what happens when they are misunderstood and perverted by non-Greeks than through any positive account of their working among Greeks, and his accounts of the use of rhetoric in contexts of Greek decision-making are more skeptical and ironic than this episode might lead one to expect. His depictions of public deliberation reflect not

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[11] Or, as George Kennedy puts it, in a pithy comment, of which the discussion here is simply an elaboration, this episode shows that "Herodotus is only partially convinced that the truth can be achieved by rational process" (*The Art of Persuasion*, 47).

[12] H.R. Immerwahr, *Form and Thought in Herodotus* (Cleveland, 1966), 128.

[13] The most extreme illustration of this point comes in the famous story of Polycrates' attempt to act on the advice of Amasis, which springs from the Herodotean insight that divine envy inevitably checks excessive human prosperity (*Histories* 3.39–43).

only the sophisticated state of contemporary speech-making but also the suspicion of verbal artistry that that sophistication aroused, and Herodotus himself subjects both rhetoric and the critique of rhetoric to a rigorous scrutiny.

Opposing attitudes to rhetoric form the subject of the brief, but telling episode of "the superfluous bag," in which the elaborate rhetorical skills of Ionia come up against the laconic temperament of the Spartans.[14] This episode occurs during the Samian *logos* in Book 3. A group of exiles who have been expelled from Samos by the tyrant Polycrates want to be reinstated and try to get help from the Spartans:

> When those who had been forced to leave the island reached Sparta, they procured an audience with the magistrates and made a long speech to emphasize the urgency of their request. The Spartans, however, at this first sitting, answered the speech by saying that they had forgotten the beginning of it, and could not understand the end; so the Samians had to try again. At the second sitting they said nothing further (*ἄλλο μὲν εἶπον οὐδέν*), but bringing in a bag, they merely remarked that the bag needed flour—to which the Spartans replied that the word 'bag' was superfluous. All the same, they decided to grant the request for assistance, and began their preparations for the expedition. (3.46)

On the surface, the episode of the superfluous "bag" (properly in quotation marks since it is the word that is superfluous, while the bag itself is essential) seems simply to confirm a stereotype about the Spartan character and to offer a witty statement of a stylistic principle that could come straight from that classic 20th century American rhetorical handbook, Strunk and White's *The Elements of Style*: Be brief, be concrete and, above all, "omit unnecessary words." But it is often the case that the briefest, most inconsequential episode may present, in its elements and in its structure, key ideas of the *Histories*, and the superiority of the bag over the speech as a medium of persuasion has a bearing on issues of central importance for Herodotus.

A striking feature of the anecdote is that, while it clearly shows the visual display of the second day to be an improvement on the profuse and intricate verbiage of the first, that display is not actually presented as swaying the Spartans. The Spartans complain that the accompanying exegesis

[14] For other episodes in which this contrast is operative, see *Histories* 1.152; 9.90–97.

is still too wordy, and Herodotus implies that they help the Samians despite the fact that they are still unimpressed by their pitch (*βοηθέειν δ' ὦν ἔδοξε αὐτοῖσι*). He confirms this impression when he goes on to report two different accounts of why the Spartans supported the Samians, both unrelated to the rhetorical mode of the Samians' embassy: the Samian version (that the Spartans were paying back the Samians for helping them in their war against the Messenians) and the Spartan version (that the Spartans were punishing the Samians then in power for the theft of a bowl they had sent to Croesus and of a corselet they had been sent by Amasis).

The continued dissatisfaction of the Spartans is partly a way of underscoring their hyper-laconic taste in political communication but, in its emptiness, the Samians' bag also serves as an emblem for the reasons behind this taste. If words detached from anything concrete, like those spoken by the Samians in their first attempt, are clearly open to the suspicion of emptiness, of an imperfect match between what is said and concrete reality, even the single word *bag* claims a linguistic resourcefulness that contradicts the Samians' actual condition of need. The use of that word is offensive both because it is inaccurate—it compromises the relationship between the visual symbol and the resourcelessness it symbolizes—and because it is insufficiently humbling—it fails to express the Samians' dependence on the Spartans in stark enough terms.

The Samians' failure to impress the Spartans even the second time around can be understood in relation to an episode in Book 8 of the *Histories*, in which the attempt to make something out of nothing through language proves similarly inadequate as a way of appealing to the more powerful. After the battle of Salamis, seeing that the Greeks are not going to pursue the Persians further, Themistocles besieges the Andrians because they have not provided the financial support he has demanded:

> The Andrians were the first of the islanders to refuse Themistocles' demand for money; he had put it to them that they would be unable to avoid paying because the Athenians had the support of two powerful deities, one called Persuasion and the other Compulsion, and the Andrians had replied that Athens was lucky to have two such useful gods, who were obviously responsible for her wealth and greatness; unfortunately, they themselves, in their small and inadequate land had two utterly useless deities, who refused to leave the island and insisted on staying; and their names were Poverty and Inability. With the support of these, no money would be forthcoming; for however strong Athens was, she could never turn Andros' 'can't' into 'can.'

This answer, and the refusal to pay, were the reasons for the siege. (8.111)

The gallant speech of the Andrians uses the theme of resourcelessness to reveal that even in their powerlessness the Andrians do possess linguistic wit; through its clever, quasi-parodic reworking of the Athenians' speech, it displays the kind of word play that was a sign of rhetorical sophistication. But it falls short of success for the same reason as the Samians' "bag," for it fails to acknowledge to the satisfaction of its audience either the subordination or the resourcelessness of the speakers. But, while the Samians simply fail to give a satisfactory account of how needy they really are to an audience that already knows it, the Andrians evidently fail to convince their audience that they are as needy as they claim, since Themistocles would presumably not be besieging them if they had succeeded. And, even if Themistocles is understood to accept the Andrians' account of their material resources, they have now demonstrated their possession of autonomy, of willingness to stand up to the Athenians, which must, in Themistocles' view, be taken from them.

Herodotus' own apparent reluctance to credit the presentation of the bag with greater success than the performance of an elaborate speech may, however, be more a reflection of its status as a visual display than of its residual wordiness, for he is both an appreciative connoisseur of such displays and a suspicious critic of them, well aware of how effectively such displays can be manipulated to create and maintain power, especially tyrannical power. The Samians' realization that the bag would work better than the speech depends on the general tendency of people to think that a visual display is more direct and reliable than a verbal account, that it corresponds more closely to a concrete reality.[15] This is the view expressed in the maxim cited by Candaules (1.8) when he tries to get Gyges to look at his wife naked: "Men always believe their eyes more easily than their ears" (*ὦτα γὰρ τυγχάνει ἀνθρώποισι ἐόντα ἀπιστότερα ὀφθαλμῶν*). But the Samians' empty bag is, in fact, no more direct an expression of their need than their speech is; it is, rather, a visual metaphor for that need. And while the necessity of interpreting that particular metaphor gives

[15] On this view in general, as well as in the *Histories*, see Hartog, *The Mirror of Herodotus*, 261–65. For general discussions of visual display in the *Histories*, see Carolyn Dewald, "Reading the World: The Interpretation of Objects in Herodotus' *Histories*," in *Nomodeiktes: Greek Studies in Honor of Martin Ostwald*, eds. Ralph M. Rosen and Joseph Farrell (Ann Arbor, 1993), 55–70; Donald Lateiner, "Nonverbal Communication in the *Histories* of Herodotus," in *Herodotus and the Invention of History*, *Arethusa* 20.1&2 (1987), 83–119.

the Spartans no difficulty, there are other, more sinister conditions under which a visual display gains its effectiveness as a means of communication through the clever exploitation of its indirect and metaphoric character.

The power of the visual metaphor can be seen in an episode that represents the opposite of open debate among citizens, secret communication between tyrants, told in Book 5 of the *Histories* in the long speech with which the Corinthian Sosicles dissuades the Spartans from reinstating the tyrant Hippias in Athens. The theme of Sosicles' speech is the evil of tyranny, especially as manifested by Periander of Corinth, and he describes how Periander learned to be an even more savage tyrant than his father by soliciting and following the advice of Thrasybulus of Miletus:

> He sent a representative to the court of this despot, to ask his opinion on how best and most safely to govern his city. Thrasybulus invited the man to walk with him from the city to a field where corn was growing. As he passed through this cornfield, continually asking questions about why the messenger had come from Corinth, he kept cutting off all the tallest ears of wheat that he could see, and throwing them away until the finest and best-grown part of the crop was ruined. In this way he went right through the field, and then sent the messenger away without a word (*ὑποθέμενος ἔπος οὐδέν*). On his return to Corinth, Periander was eager to hear what advice Thrasybulus had given, and the man replied that he had not given any at all (*οὐδὲν. . . ὑποθέσθαι*), adding that he was surprised at being sent to visit such a person, who was evidently mad and a wanton destroyer of his own property—and then he described what he had seen Thrasybulus do. Periander seized the point at once; it was perfectly plain to him that Thrasybulus recommended the murder of all the people in the city who were outstanding in influence or ability. Moreover, he took the advice, and from that time forward there was no crime against the Corinthians that he did not commit. (5.92.ζ.2-η.1)

In this situation, too, words are seen to be empty and ineffective—both Thrasybulus' small talk with the messenger and the messenger's commentary to Periander on his visit to Thrasybulus are pointless—but the metaphoric visual display is highly effective, sending Periander a message that is both useful and, to him, instantly intelligible. But it is intelligible to Periander alone, as the protest of the messenger makes clear, and Thrasybulus' message is effective only because it remains generally cryptic and inexplicit: Were it openly expressed, it would lose its utility as a guide to the exercise of tyrannical power.

The unexplained display is clearly an ideal medium of communication between conspirators, which is what Thrasybulus and Periander, as mutually supportive tyrants, effectively are, and this can be seen as well in the comparable incident of *τὸν ἐστιγμένον τὴν κεφαλὴν* (the man with the tattooed scalp), which does involve an actual conspiracy. Histiaeus, the tyrant of Miletus who is acting as a counselor to Darius, sends a message to Aristagoras, the governor of Miletus, urging him to start what becomes the Ionian Revolt:

> Histiaeus had been wanting to make Aristagoras take this step, but was in difficulty about how to get a message safely through to him, as the roads from Susa were watched; so he shaved the head of his most trustworthy slave, pricked the message on his scalp, and waited for hair to grow again. Then, as soon as it had grown, he sent the man to Miletus with instructions to do nothing (*ἐντειλάμενος αὐτῷ ἄλλο μὲν οὐδέν*) when he arrived except to tell Aristagoras to shave his hair off and look at his head. The message found there was, as I have said, an order to revolt. (5.35)

Although, in this case, the message itself is baldly stated and does not require interpretation, it still needs to be uncovered to be understood, and the total display of the slave in his usual, hairy state is as misleading as Thrasybulus' strange behavior in the fields. The mystification that occurs in both cases is expressed in the similar roles of the two messengers, who each deliver a visual message without stating its meaning, bearing that message in one case in his puzzled report on what he has witnessed, in the other on his scalp, to which he directs Aristogoras' gaze. Histiaeus' message has a somewhat blander echo in the report, noted at the end of Book 7, that Demaratus, the exiled Spartan king, sends back to Sparta of Xerxes' intention to invade Greece: "As the danger of discovery was great, there was only one way in which he could contrive to get the message through: this was by scraping the wax off a pair of wooden folding tablets, writing on the wood underneath what Xerxes intended to do, and then covering the message over with wax again. In this way the tablets, being apparently blank, would cause no trouble with the guards along the road" (7.239). Giving the appearance of bearing no message at all, these tablets depend for their eventual intelligibility on a gifted interpreter, Gorgo, the clever daughter of Cleomenes and wife of Leonidas.

In the case of Thrasybulus cutting down the sheaves, the medium also *is* the message, for it is Herodotus' insight, elaborated throughout the *Histories*, that in order to be exercised effectively, power must be hidden as

well as manifest, known to exist but also kept from view. An early and exemplary exposition of this point comes in Book 1 in Herodotus' account of the first ruler of the Medes, Deioces. Deioces is a gifted man in love with tyranny (ἐρασθεὶς τυραννίδος), living at a time when the Medes have no central government. He pursues his ambition by establishing himself as an absolutely scrupulous and fair arbiter of disputes; when people have come to rely on him in this role, he announces that he has had enough of it and withdraws; lawlessness reigns and the Medes get together and decide that they must have a king and that the king must be Deioces. Once king, Deioces forces the Medes to build a capital city, Ecbatana, with a heavily fortified palace at its center and hides himself within it:

> When the work of building was complete, Deioces introduced for the first time the ceremonial of royalty: admission to the king's presence was forbidden, and all communication had to be through messengers. Nobody was allowed to see the king, and it was an offense for anyone to laugh or spit in the royal presence. This solemn ceremonial was designed as a safeguard against his contemporaries, men as good as himself in birth and personal quality, with whom he had been brought up in earlier years. There was risk that if they saw him habitually, it might lead to jealousy and resentment, and plots would follow; but if nobody saw him, the legend would grow that he was a being of a different order from mere men. (1.99)

Deioces' power resides initially in himself, in his inherent ability to settle disputes, and so he withholds himself. But once that power is acknowledged, he maintains it by keeping himself assiduously hidden, and simply the fact of being hidden becomes, Herodotus implies, the source of its continuation; being hidden is itself what makes Deioces different from other people. As a result of this strategy, Deioces reigns for fifty-three years, unites all of the Medes under his rule, and passes his kingdom on to his son. But the *Histories* also includes accounts of other tyrants who are less successful than Deioces in keeping the sources of their power suitably obscured, who in trying to make their power manifest also make it too explicitly plain and then lose it. One such figure is Croesus, whose insistence on showing off his money to the Athenian wise man Solon does not actually lead to his downfall, but surely prefigures it. Another is the equally paradigmatic figure Candaules, who loses his power because he insists on showing his servant Gyges his wife when she is naked, no longer hidden by her clothes and thus stripped of the shame or αἰδώς that her clothes signify. In the process of persuading Gyges to fall in with his plan,

Candaules delivers the maxim that I have already quoted about how men believe their eyes more readily than their ears. Candaules fails to realize that this proverbial wisdom is valuable to him only if he exploits it to put before men's eyes a visible proof of his power that also obfuscates it.

In a climate of skepticism about the power of artful speech to mislead, the visual display may, then, appear to possess a greater credibility that derives from its literally visible nature. But Herodotus makes it clear that the greater credibility of the display is illusory and thus especially dangerous, because material signs can conceal the truth just as well as verbal ones.[16] The clearest exposition of this may be in the story of the tattooed slave, in which Histiaeus' purpose is spelled out in words but also covered over by the hair of the slave. Those who practice a non-verbal rhetoric successfully are careful to keep their displays metaphorical—not to make what they put on view correspond too exactly to what they have in mind, which is the mistake of Croesus and Candaules. Once again, Thrasybulus of Miletus is the definitive practitioner of this art. In an episode recounted early in Book 1, Thrasybulus contrives to end a depleting twelve-year war with the Lydians by having all the grain in the city brought into the public square and, when a messenger from the Lydian king Alyattes is present, having all of the citizens start drinking and reveling. His goal is to have the messenger report to Alyattes "the enormous quantity of grain he had seen poured recklessly out in the street" (*σωρὸν μέγαν σίτου κεχυμένον*). When the message is delivered, Alyattes, concluding that Miletus is not being reduced to hunger by his assaults, makes peace (1.21–22). Thrasybulus is thus more successful with a misleading display of his scant resources than the Samians are with their attempt at a more accurate one—which, as an empty container for grain, is in form an inversion of his—or than Croesus is with a straightforward display of his abundant wealth.[17]

In their care not to collapse the metaphor, the most successful wielders of non-verbal rhetoric avoid offering any exegesis, any verbal explana-

[16] On "the complex tensions between things and their meanings," see Dewald, "Reading the World," especially 57–63.

[17] On the manipulation of enigmatic objects and displays as a means by which the weak outwit the powerful in the *Histories*, see Lateiner, "Non-Verbal Communication," 98. Thrasybulus' strategy is echoed later in the *Histories* in the account of how Polycrates of Samos finally meets the unhappy fate that he had tried unsuccessfully to ward off by throwing away his ring. The Persian governor of Sardis, Oroetes, lures Polycrates to Sardis, where he captures and kills him, by promising him money to finance his plan to dominate the sea. Before he goes in person, Polycrates sends a messenger to make sure Oroetes has the money. Oroetes fills eight chests nearly to the top with stones, which he then covers with a thin layer of gold. He shows these to the messenger who then reports back to Polycrates.

tion, of what they show. Even one word compromises the efforts of the Samians; Thrasybulus sends Periander's messenger away without a word; and Histiaeus tells his slave to confine himself to delivering the instruction to shave his head. The effectiveness of the unglossed display is especially well illustrated by the response of the Scythian king Idanthyrsus when Darius demands of him the gifts of earth and water, which the Persians regularly require from subjected peoples (4.127–31). Idanthyrsus has no trouble knowing what these objects would symbolize and articulates it even as he refuses to give them: "I will send you no gifts of earth and water, but others more suitable; and your claim to be my master is easily answered—be damned to you!" (127). His more suitable gifts, on the other hand, are delivered without explanation: "The Scythians . . . sent him the promised presents—a bird, a mouse, a frog, and five arrows. The Persians asked the man who brought these things what they signified, but got no reply. The man's orders—so he said—were merely to deliver them, and to return home as quickly as he could" (131). The Persians are left to come up with their own explanations. Darius decides these *are* the desired gifts of earth and water, reasoning (if you can call it that) that "mice . . . live on the ground and eat the same food as men; frogs live in water; birds are much like horses; and the arrows symbolized the Scythian power, which they were giving into his hands" (132). But his advisor Gobryas comes up with a different interpretation, on the basis of which Darius decides that he had better give up and go home: "Unless you Persians turn into birds and fly up into the air, or into mice and burrow under ground, or into frogs and jump into the lakes, you will never get home again but stay here in this country, only to be shot at by the Scythian arrows" (132). Although Gobryas'—also rather contorted—explanation gets the Scythians the result they want, we have no way of knowing that it necessarily corresponds to a meaning that Idanthyrsus actually has in mind when he sends his gifts. But that does not matter, because once again the medium is the message: In their elusiveness, Idanthyrsus' gifts replicate the key attribute of the Scythians, their ability never to be captured, which Herodotus identifies as the most valuable of human achievements (4.46).

The refusal of these figures to explicate what they display links them to other characters in the *Histories* who remain silent at key moments, but are, in fact, harboring unspoken intentions and unsuspected capacities for action. One such figure is, of course, the unnamed wife of Candaules, who says nothing at the moment when she sees that Candaules has shamed her by arranging for Gyges to see her naked, but who later takes revenge by forcing Gyges to overthrow Candaules. Another early example is Harpa-

gus, who is cruelly punished by Astyages for saving rather than killing the infant Cyrus. Astyages feeds Harpagus a meal of his own son, brings in the boy's head, hands, and feet, and asks Harpagus if he recognizes the creature whose flesh he has eaten. Harpagus says nothing of what is really in his heart, simply remarking that he does recognize the creature and that the king can do no wrong, but then goes on to incite Cyrus to overthrow Astyages. It should come as no surprise that he does so by sending him a secret letter hidden in the belly of a hare and delivered by a messenger disguised as a huntsman (1.113–24). In their avoidance of speech and reliance on enigmatic gestures, these highly effective agents contrast with the Samians and the Andrians, whose deployment of their verbal capacities proves unsuccessful.

The strategic reticence of these important historical agents generates an additional contrast, a contrast between them and the historian who tells their stories. It is the function of the historian, as Herodotus presents it, to use his eyes, to practice *αὐτοψία*, first-hand inspection, and also to provide a verbal *ἀπόδεξις*, a setting forth, of what he sees. His role is not simply to bear the message of what there is to be seen but also to explicate it through words, and his explication collapses the metaphors, making explicit the relationship between what is seen and what really exists or what is really intended;[18] he exposes the nature of tyrannical power and gives a detailed and often eyewitness account of the exact resources, both material and other, of various nations. The role of the historian as an accountant of national resources is reflected, not only in Herodotus' own practice, but also in the episode in Book 5, in which Hecataeus of Miletus, in solitary opposition to the Ionian revolt, tries unsuccessfully to dissuade Aristagoras by "enumerating the resources at Darius' command, and supporting his point with a long list of the nations under Persian dominion" (5.36). And here we might recall the contrast between the silent Persians who say nothing when Xerxes announces the invasion of Greece, but whose unspoken wish not to go is closely related to the eventual failure of the invasion, and the lone voice of Artabanus.

The historian's exegetical function can be illustrated from a passage, which has already been discussed, that is at once a representation of historiography and an example of successful oratory, the speech of Sosicles

[18] As François Hartog puts it, "he makes what can be seen, what can be surveyed, and what can be said coincide"; *The Mirror of Herodotus*, 365. On the connection between the interpretation of the material world and the investigations of the historian, see Dewald, "Reading the World," 70.

at Sparta in which he argues against the reinstatement of Hippias. Much of Sosicles' speech is in the form of a historical narrative that closely resembles those given by Herodotus in his own voice. Sosicles traces the history of the Corinthian tyrants from generation to generation, stressing their cruel misdeeds, including in his account several oracles and prophecies. Like Herodotus, Sosicles claims for his position the authority of personal knowledge, asserting that the Spartans would never have made their proposal if they had experienced tyranny first hand, as the Corinthians have. In the course of his narrative, Sosicles also collapses Thrasybulus' visual metaphor: He gives voice, for his audience, to the explanation of Thrasybulus' display that Periander keeps to himself: "it was perfectly plain to him that Thrasybulus recommended the murder of all the people in the city who were outstanding in influence or ability." Sosicles is speaking under circumstances that are quite similar to those in which Artabanus opposes Xerxes' plan to invade Greece. At this gathering of their allies, the Spartans, like Xerxes, make a proposal to extend the reach of tyranny; there, too, no one in the audience supports the proposal. But only one person has the courage to speak up in opposition, and he does so to voice the perspective of the historian. In this case, however, the speaker is successful: As a result of Sosicles' exposition, the Spartans decide not to restore Hippias to Athens.

A more characteristic sense of Herodotus' view of rhetoric is probably conveyed, however, by a final example, an episode in which the perspective of the historian is included, but differentiated from both a visual and a purely verbal attempt at persuasion—and in which the contrast between visual and non-visual rhetoric found in the episode of the superfluous bag is replayed with different results. This is the account in Book 5 of the *Histories* of the attempt by Aristagoras of Miletus to gain support from first the Spartans and then the Athenians for the Ionian revolt. When Aristagoras arrives in Sparta, he seems already to have absorbed the lesson that the Samians learned only after their initial failure, because he comes equipped with a visual aid: a bronze πίναξ containing a map of the entire world. Displaying this map to the Spartan king Cleomenes, he gives a speech in which he dwells on the wealth of the various nations in the Persian empire, noting especially their contiguity, the way they seem to crowd together in an unbroken stream of riches from the coast to Susa. Cleomenes' only response to this is to tell him to come back two days later. When he does, Cleomenes asks him how many days it takes to reach Susa from the Ionian coast. Answering this question is Aristagoras' downfall, as Herodotus tells us:

> Up to this, Aristagoras had been clever, and had led Cleomenes on with great success; but in answering this question he made a bad mistake. If he wanted to induce the Spartans to invade Asia, he ought never to have told the truth; but he did and said it took three months. Cleomenes stopped Aristagoras from saying any more of the road to Susa. 'Milesian stranger,' he cried, 'you must leave Sparta before sunset. Your proposal to take Lacedaemonians a three months journey from the sea is a highly improper one.' (5.50)

The truth that Aristagoras so fatefully tells consists of disclosing the scale of the map, in other words of undoing—or collapsing—the distinction between the real earth and the much smaller bronze image of it that he has been using to gain his ends.[19] Once again, even a few words undo the effect of a mystifying display.

Aristagoras then goes on to Athens, where he forgets about the map and relies instead on unanchored verbal inventiveness, giving a speech to the δῆμος in which he makes all the arguments he did at Sparta and more (5.97): "Indeed," Herodotus tells us, "so anxious was he to get Athenian aid that he promised everything that came into his head until he succeeded." But there he encounters no awkward questions about the relationship between his words and material reality and thus succeeds in his mission, which prompts from Herodotus the observation that "Apparently it is easier to impose upon (διαβάλλειν) a crowd than an individual, for Aristagoras, who had failed to impose upon Cleomenes, succeeded with thirty thousand Athenians." For all the glory that accrues from their defense of Ionia, the Athenians here are portrayed as making an error of judgment that is avoided by Cleomenes and also by the Spartans of the earlier episode, who do not fall for an endless speech that is ungrounded in anything concrete. And here Herodotus' editorial comment represents a more judicious expression of suspicion towards rhetoric than that of Xerxes when he dismisses Artabanus' words as "empty" (μάταια).

Like the earlier Spartans who found the word *bag* superfluous, Cleomenes requires no further detail about the road to Susa once he learns its shocking length. But, tellingly, Herodotus himself, once he has described how Aristagoras (after a last-ditch attempt at bribery) leaves Sparta "without succeeding in saying any more about the road to Susa," goes on to supply that information, elaborating on Aristagoras' fateful mention of three months. He inserts three chapters of description, which clearly re-

[19] On the map as a failed attempt at mystification, see Hartog, *The Mirror of Herodotus*, 361–62.

flect the perspective of a traveling investigator like himself, since he comments on the availability of inns and remarks that the road is safe to travel because it always goes through inhabited country (5.52–54). He also includes many specific measurements, from which he concludes that "one can see that Aristagoras of Miletus was quite right when he told the Spartan Cleomenes that it took three months to reach Susa from the sea," verifying the point on which, as he says, Aristagoras was all too truthful. At several points in the *Histories*, Herodotus presents himself as choosing between competing roads of discourse, as when he says he knows three other *λόγων ὁδούς* than the one he follows concerning the origins of Cyrus (1.95). Here his truth-telling mission leads him to supply an otherwise missing *logos* about a road.

Throughout the *Histories*, Herodotus describes a universe in which the divinely-sponsored patterns of history are realized through the misguided and selfish actions of human beings, who blindly pursue their own desires, who act unwittingly in ways that are not in their own interest, or who do the right things for the wrong reasons. In this context, there is an inevitable tension between the verbal constructs and visual displays by which people are persuaded to act as they do and the truths that the historian sets out by articulating what he observes. It is no surprise, then, that we should find Herodotus aligning his own enterprise with instances of unsuccessful rhetoric, attempts at persuasion that fail even though they are in content demonstrably correct: with the sensible advice of Artabanus that is lost on Xerxes and unequal to the forces of Persian expansion and divine destiny, and with the accurate calculation of Aristagoras that undoes the subtle deception of his visual display.

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CHAPTER 4

Rhetoric, Art, and Myth: Isocrates and Busiris

by Terry L. Papillon

According to traditional accounts, the story of Busiris, mythical king of Egypt, is a frightening tale of violence. Apollodorus tells us the following:

> Leaving Libya, he [Herakles] passed through Egypt, which was then under the rule of Bousiris, son of Poseidon and Lysianassa, daughter of Epaphos. Bousiris used to sacrifice strangers on an altar of Zeus, in accordance with an oracle; for barrenness had gripped the land of Egypt for nine years, and Phrasios, a skilled diviner who had come from Cyprus, said that the barrenness would come to an end if they slaughtered a male foreigner in honour of Zeus every year. Bousiris began by slaughtering the diviner himself, and continued to slaughter strangers who landed there. So Heracles was arrested and dragged to the altars, but he broke free of his bonds, and killed both Bousiris and his son Amphidamas.[1]

In Isocrates we hear none of this traditional story. His discourse entitled the *Busiris* presents the story of Busiris very differently from the story as we normally think of it. Part of the reason for this is that it reacts to a speech by the *rhetor* Polycrates that sought to defend Busiris. Isocrates claims that Polycrates mishandled the defense and corrects him. After an introduction that faults Polycrates for mishandling the presentation of Busiris (by telling some of the traditional story), Isocrates offers a number of topics that are recognizable from later theory of epideictic discourse: Busiris' lineage, the manner of his rule, and what he gave to society. His gifts include such things as the caste system, government, advanced civili-

[1] *Library* 2.5.11, tr. Robin Hard, Oxford World's Classics (Oxford, 1997).

zation, religion, and philosophy. Isocrates then concludes the speech quite self-consciously with a defense of his own method of praise. In this conclusion, Isocrates addresses many topics regarding Busiris that he had not treated, arguing that they are either not true or not appropriate. He also comes close to arguing compositional theory, addressing a number of important issues, though in negative terms: the need to use the correct *topoi* (33), the importance of δόξα and εἰκός (35), the potential danger of example speeches (48), and the need for (and danger of) philosophy (49). He also talks of his goal of "making a demonstration for the benefit of the audience" (ὑποδεῖξαι).[2]

The question posed in this paper is why Isocrates tells the story of Busiris the way he does. Certainly the presentation is understandable in terms of the theory of epideictic composition. D.A. Russell and N. Wilson's edition of Menander Rhetor has made it easy to study the ways in which the ancients thought it appropriate to praise. Isocrates' speech shows the kind of treatment laid out by Menander: the introduction followed by chronologically organized topics. Isocrates differs only in the rather programmatic beginning and ending, which may be due to the educational/advertising emphasis of these sorts of speeches. Nevertheless, we need to remember that such theoretical organization as Menander gives us comes well after the composition of this speech. Aristotle also talks of what is needed for an epideictic speech, but his treatment is also very probably later than this speech of Isocrates. Moreover, regardless of the dating of this speech (on which more below), Isocrates seems very consciously to be struggling against the organization of Aristotle.[3] Thus we

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[2] For more on "hypodeictic" discourse, see below and Terry Papillon, "Isocrates' *Techne* and Rhetorical Pedagogy," *Rhetoric Society Quarterly* 25 (1995), 149–63.

[3] Edward Schiappa has argued for the need to avoid allowing later theory to color our perception of earlier *rhetores;* see "*Rhêtorikê:* What's in a Name? Toward a Revised History of Early Greek Rhetorical Theory," *Quarterly Journal of Speech* 78 (1992), 1–15; "The Beginnings of Greek Rhetorical Theory," in *Rhetorical Movement: Essays in Honor of Leland M. Griffin*, ed. D. Zarefsky (Evanston, 1993), 5–33; and especially "Toward a Predisciplinary Analysis of Gorgias' *Helen*," in *Theory, Text, and Context: Issues in Greek Rhetoric and Oratory*, ed. L.C. Johnstone (Albany, 1996), 65–86. This is a useful warning, though perhaps one needing some caution; see Terry Papillon, *Rhetorical Studies in the Aristocratea of Demosthenes* (New York, 1998), 3–5. Recently George Kennedy has argued that the theory of the Greeks and Romans can help us understand the rhetoric of non-classical cultures, even of animals; see George Kennedy, *Comparative Rhetoric: An Historical and Cross-Cultural Introduction* (Oxford, 1998). I think that Kennedy is correct when he says that we can learn something of comparative rhetoric by using Greco-Roman rhetoric as a lens, and Mary Garrett's review points out the important beginning that the book *Comparative Rhetoric* makes (*Rheto-*

must try to understand why Isocrates wrote the Busiris the way he did, but we must do it on his own terms. What does he say, and what does he do, both here and elsewhere, that would help us understand this speech?

Now, this may seem like a moot point. After all, we already know why Isocrates wrote the *Busiris*, just as we know why he wrote the *Helen*. Scholars have told us this for years. They are epideictic encomiastic display speeches used as examples both for advertising his school and for teaching within it. So much the major authorities say; to quote Larue van Hook, for example: "The Busiris . . . is an epideictic essay of the 'display' type."[4] He also says: "This discourse is a rhetorical exercise, artificial in its nature, composed near the beginning of Isocrates' professional career in Athens."[5] R.C. Jebb and G. Mathieu and É. Brémond say similar things.[6] The issue is not quite so simple, however; the phrases "epideictic essay of the 'display' type" and "a rhetorical exercise, artificial in nature" are unclear when we speak of Isocrates. They may be clear for *rhetores* later, in the Second Sophistic, for example—though this too is open to question—but not for Isocrates. Thus, I do not think that the question of purpose is a moot point. Why does Isocrates write this speech in the way that he does?

In order to make sense of Isocrates' treatment of Busiris, we need to have a sense of several contexts. First, it is important to have a sense of the history of the Busiris story. To what is Isocrates reacting, or what do we know of the story as it existed before Isocrates? Secondly, we need to have a sense of the discourse in the context of Isocrates' own work, chronologically, thematically, and pedagogically. Finally, by returning to the historical context of the Busiris story after Isocrates, we might get some sense of

rica 16 [1998], 431–33). Kennedy's method might seem to contradict Schiappa's call to restrict the use of Greek theorizing to the period after such theorizing is known to the practitioners, however. But Schiappa is not quite so strict and has said that the Aristotelian tradition, for example, can be helpful for understanding an earlier source, but must not be forced on a *rhetor* where it is not appropriate. I think that he is correct to be wary in the case of Isocrates, for I think that Isocrates was very consciously trying to counteract the kind of organization proposed by Aristotle (and Plato), as I have argued before; see Papillon, "Isocrates' *Techne*."

[4] L. Van Hook, ed., *Isocrates*, Loeb Classical Library (Cambridge, 1945), vol. 3, 100.

[5] Ibid., 101.

[6] Jebb calls it a "slight essay"; *Attic Orators from Antiphon to Isaeus* (New York, 1962), vol. 2, 93. Mathieu and Brémond talk of the sophistic "love of paradox"; G. Mathieu and É. Brémond, eds., *Isocrate, Discours* (Paris, 1929–62), vol. 1, 184. Blass refers to the related discourse, *Helen*, as "ein rhetorisches Kunststück, und nichts mehr als das"; F. Blass, *Die Attische Beredsamkeit* (1892; reprint, Hildesheim: Georg Olms, 1979), 246. Cf. also J. Bons, "*Poetikon Pragma:* Isocrates' Theory of Rhetorical Composition, with a Rhetorical Commentary on the *Helen*" (diss., Katholieke Universiteit Nijmegen, 1996), 165.

the influence of Isocrates' version. All that being done, we will be able to draw some conclusions about Isocrates' discourse, and even further, about Isocratean discourse as a category, and begin to think in terms of Isocrates' vision and what could be called the "Isocratean Tradition in Ancient Rhetoric." Let us go back, then, and set Isocrates' discourse into the context of the history of the Busiris story in the literary and visual arts. Such a survey will show the variety of treatment that can be seen in this story. This variety will become an important issue for our discussion.

We see Busiris first in a fragment of Hesiod where he is described merely as a "son of Aigyptos" and placed eleven generations before Herakles.[7] We have nothing more from Hesiod, but the fragment tells us that the Busiris story existed already in the eighth century and that there was controversy about it. We have no further contact with the story until vase painting in the second half of the sixth century.[8] Although J. Boardman reports that "the scene is rare (unique) in Athenian black figure," it is quite common to see vases with the story of Herakles and Busiris in red figure during the late Archaic Age, and this popularity continues into the mid-fifth century.[9] I know of nineteen vases that date, very roughly, from 540 to 440 B.C.[10] Early vases take either of two approaches to the story. Both

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[7] Hesiod (fr. 222, Rzach) according to Theon, *Progymnasmata* 93.21–22 (ed. Spengel); cf. George Kennedy, ed., *Progymnasmata: Greek Textbooks of Prose Composition* (Fort Collins, 1999), 29.

[8] We can not yet say whether the Busiris story shows similar kinds of conscious political maneuvering in the sixth and fifth centuries, as has been seen with Herakles and Theseus. For such possibilities, see the discussions of the use of Herakles by J. Boardman ("Herakles, Peisistratos, and Sons," *Revue archéologique* [1972], 57–72; "Herakles, Peisistratos, and Eleusis," *Journal of Hellenic Studies* 95 [1975], 1–12; "Herakles, Peisistratos, and the Unconvinced," *Journal of Hellenic Studies* 109 [1989], 158–59), and R. Cook ("Pots and Pisistratan Propaganda," *Journal of Hellenic Studies* 107 [1987], 167–69). On Theseus, see A.H. Shapiro, "Theseus and the Creation of an Athenian National Hero," *American Journal of Archaeology* 93 (1989), 279. The story may show evidence of cultural, if not political, manipulation, as I will argue below.

[9] J. Boardman, *Athenian Black Figure Vases* (London, 1974), 224.

[10] Cinti 1959.1 (Swing P., 540 BCE), Vienna 3576 (Busiris P., 520), Villa Giuliana 57912 (Epiktetos, 520), London E38 (Epiktetos, 520–490), Berlin 3239 (Eleusis P., 500), Oxford 531 (Berlin P., 500–480), Munich 2428 (Troilos P., 500–490), Leipzig T651 (Pan P., 480–460), Athens 9683 (Pan P., 480–460), New York 15.27 (Agrigento P., 470), Boston 10.188 (Agrigento P., 470), Reggio (Leningrad P., 470), Ferrara T499 (near to the Dokimasia P., 470–460), Athens Mkt/London Mkt (Cleveland P., 470–460), Berlin 2534 (P. of Louvre, 470–460), Bologna 174 (Niobid P., 460), Cab. Med. 393 (Ethip P., 450), Bari 1397 (Polygnatus & Group, 440–420), Ferrara T579 (P. of Bologna, 440); cf. LIMC Bousiris 9, Bousiris 10, Aithiopis 13.

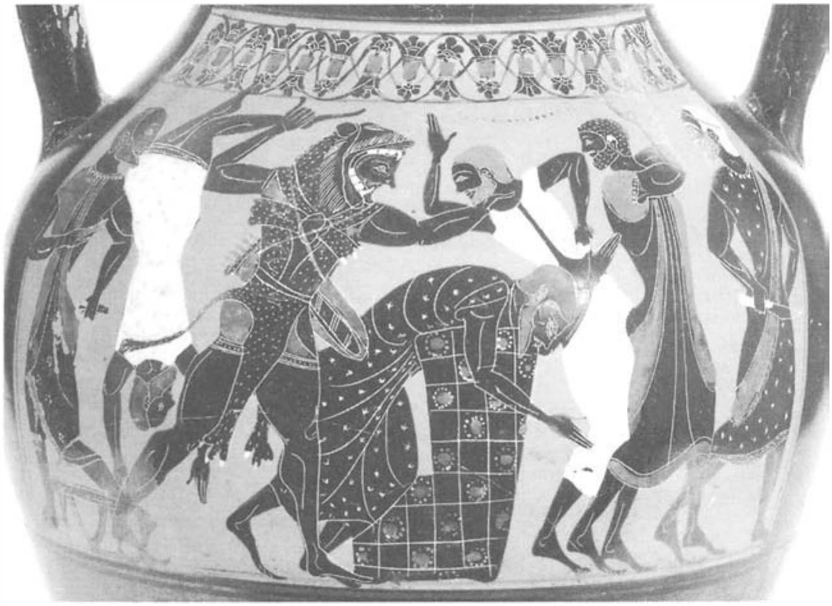

PLATE 1: Swing Painter (Cincinnati 1959.1), Attic Black Figure Amphora, c. 540–520 B.C. Reproduced by permission. Cincinnati Art Museum, Museum Purchase.

approaches tell the story of the death of Busiris at Herakles' hands, but one emphasizes a comic, burlesque sensibility, while the other is more traditional and somber.

The two earliest vases, from about 540–520, show the comic tone. The first is an amphora of the Swing Painter (Cincinnati 1959.1), dated to about 540 (plate 1).[11] W.H. Moon says: "There is something brilliantly comical about the Swing Painter's conception, about this vengeful, hulking Herakles, who by sheer brute force, wielding an Egyptian as a human club, manages to worst the entire company, including the pharaoh, Busiris."[12]

A second early vase is a Caeretan Hydria by the Busiris Painter (Vienna 3576) dated to about 520. This vase also shows Herakles about to throttle the men around him with one of their own men acting as the club. T. Gantz calls this image "wonderfully lively."[13] The picture of Herakles stepping

[11] I am indebted to the Perseus Database at Tufts University (*www.perseus.tufts.edu*) for first introducing me to work on the Swing Painter's vase.

[12] W.H. Moon, *Greek Vase-Painting in Midwestern Collections* (Chicago, 1979), 58–59.

[13] Timothy Gantz, *Early Greek Myth* (Baltimore, 1993), 418.

on the neck of some, strangling others in the crook of his elbows, and throttling others with his hands, while others cower in fear, is indeed quite a picture. F. Hiller von Gaertringen comments on the comic tone of this vase too:

> Bereits in der ältesten bildlichen Darstellung ist ein starker Zug zum Burleskkomischen bemerkbar, in der Bildung des Herakles und noch mehr der im Vergleich zu dieser athletischen Riesengestalt fast zwergenhaften Neger (nicht Ägypter). Dies und die Wandlung in der Auffassung des Herakles, die v. Wilamowitz Eur. Her. I 333f. charakerisiert hat, vereinigte sich, um die B.-Sage zu einem beliebten Gegenstande der Komoedie zu machen.[14]

In the Caeretan Hydria (plate 2), the contrast between Herakles and the other figures is even more pronounced than in the Swing Painter vase. E.H. Gombrich explains why this may be so:

> There is little doubt that this humorous account of Herakles' exploits among the Egyptians was inspired by Egyptian renderings of some victorious campaign. We are familiar with the type of pictorial chronicle that shows the gigantic figure of Pharaoh confronting an enemy stronghold with its diminutive defenders begging for mercy. Within the conventions of Egyptian art the difference in scale marks the difference in importance. To the Greek who looked at pictures as evocations of a possible event, the type must have suggested the story of a giant among pygmies. And so he turns the Pharaoh into Herakles wreaking havoc among the puny Egyptians. The pictograph for a whole city becomes a real altar onto which two of the victims have climbed, and climbed in vain, stretching out their hands in comic despair.[15]

Thus, the Greek vase painter took an idiom that meant one thing for the Egyptians and borrowed it, transforming it for his own use. In these two vases, as well as the vase by the Pan Painter (plate 5), where Andronicos describes the painting as a "tragi-comic episode," the painter empha-

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[14] F. Hiller von Gaertringen, "Busiris," in G. Wissowa, *Paulys Realencyclopädie der classischen Altertumswissenschaft* (Stuttgart, 1897), 3.1,1075. This work will be referred to in subsequent notes as RE.

[15] E.H. Gombrich, *Art and Illusion: A Study in the Psychology of Pictorial Representation*, 2nd ed. (Princeton, 1961), 135–36.

PLATE 2: Busiris Painter (Vienna 3576), Caeretan Hydria, c. 520–500 B.C. Reproduced by permission. Photo courtesy of the Kunsthistorisches Museum, Vienna.

sizes the comic nature of the scene by having Herakles grab one African by the leg and use him as a club. Moon continues:

> For his representation of the Busiris myth, the Swing Painter appears to have borrowed and adapted some essential elements from the traditional iconography employed by Attic vase-painters to depict the death of Priam. Black-figure artists normally portray Priam, the elderly king of Troy, stretched out over an altar, either already slain or begging for mercy from his assailant, Achilles' vengeful son, Neoptolemos. . . . On the amphora in Cincinnati [plate 1], the pharaoh Busiris lies slain upon an altar in much the same manner as King Priam. . . . Many black-figure representations of the story of Priam, moreover, show Neoptolemos wielding the body of Astyanax, Hektor's young son and Priam's grandson, as a weapon. This gruesome touch, which is not part of the literary account of the legend, comes from the narrative of the death of Astyanax by Lesches (*The Little Iliad*, Par. 14), according to which Neoptolemos seized the child by his foot and hurled him from the walls of Troy. . . . Very much the

> same motif is employed by the Swing Painter to portray Herakles on the Cincinnati amphora. Having already dispatched Busiris, the hero has grasped one of his victim's priests by the ankle and prepares to use him as a club against another, whom he has seized by the throat.[16]

One interesting element of this depiction, then, is that Herakles uses an Egyptian as a club to beat others. In the vases that tell the story of Priam and Neoptolemus, such as that of the Brygos painter (Louvre G152, plate 4), this is not funny at all. The Swing Painter seems to get the idea from his own teacher, the Princeton Painter, as Moon points out, but in contrast to the Priam scene—and this is the important point—the sense of the scene is different. The universal assessment of the early Busiris images with Herakles holding an Egyptian by the ankle is that they are funny. This is an odd contrast, but we have here a *topos* being used for a very different purpose. Greek vase painters can take an idiom from Egypt and use it in their own way, for their own purpose; evidently they can also move an iconographic motif from one tone to another. This is not a problem, and, in fact, offers many new possibilities for the artist.

Other vases from the period or slightly later give a more traditional pose of Herakles with his club. The Epiktetos vase (London E38, 520–490, plate 3) and the Troilos painter (Munich 2428, 500, plate 4) have a more somber tone to them.[17] The traditional club appears in place of the human club; the violent movement and the fear on the part of the Africans are more striking in these vases.

The literary tradition also shows this possibility of two different approaches to the story. In the first quarter of the fifth century, Epicharmus presented the comedy *Bousiris*, from which we have only 4 lines. They are significant lines nonetheless:[18]

> First, if you should see him eating, you would die:
> His throat roars from within; his jaw rattles.
> His molars chatter and he grinds his big dog teeth.
> He hisses out his nostrils, and wiggles his ears.[19]

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[16] Moon, *Greek Vase-Painting*, 58–59.

[17] See too Ferrara T579 (440 B.C.) and the South Italian vases mentioned below.

[18] See G. Kaibel, ed., *Comicorum Graecorum Fragmenta* (1890; reprint, Berlin: Weidmann, 1975), 21, or T.B.L. Webster, *Dithyramb, Tragedy, and Comedy*, 2nd ed. after Pickard-Cambridge (Oxford, 1962), 260.

[19] *πρᾶτον μὲν αἰκ ἔσθοντ' ἴδοις νιν, ἀποθάνοις· / βρέμει μὲν ὁ φάρυγξ ἔνδοθ', ἀραβεῖ δ' ἁ γνάθος, / ψοφεῖ δ' ὁ γομφίος, τέτριγε δ' ὁ κυνόδων, / σίζει δὲ ταῖς ῥίνεσσι, κινεῖ δ' οὔατα.*

PLATE 3: Epiktetos (London E38), Attic Red Figure Kylix, c. 520–490 B.C. Reproduced by permission. Copyright © The British Museum, London.

These lines describe the terrifyingly funny character that Herakles usually portrays in Greek Old Comedy.

A bit later, Pherecydes of Athens (perhaps 460) tells the traditional story (according to the scholia to Apollonius of Rhodes) and Herodotus also tells it, though only in order to ridicule it (2.45). Herodotus uses the story, though he does not name Busiris explicitly, to show the poor sources Greeks have for the Egyptians, since the latter did not practice human sacrifice. Herodotus gives a first example of the rationalism that we will see manifested in Isocrates later. In this same period, the poet Cratinus also presents a comedy on the Busiris story (ca. 440–420),[20] and we have meager evidence for a satyr play by Euripides, likely in 408 B.C., called the *Busiris*.

There is not enough evidence to talk of any relation between the verbal and visual arts here, but both visual and literary sources seem to see the Busiris story as grist for both a comic mill and a traditional one.[21] The traditional tellings are found in historical debunking, as in Herodotus, and in

[20] Meineke's suggestion (*Fragmenta Comicorum Graecorum* [Berlin, 1970]) that this is the work of the younger Cratinus and thus an example of Middle Comedy does not seem to have taken hold; see Korte (RE 11.2,1648) and Kassel-Austin (*Poetae Comici Graeci* [Berlin,1983-]) who ascribe it to the elder Cratinus.

[21] I am less inclined to connect the appearance of myths on vases with an influential literary text than Shapiro; see A.H. Shapiro, *Myth into Art: Poet and Painter in Classical Greece* (London, 1994). Cf. T.H. Carpenter, review of Shapiro, *Classical Philology* 91 (1996), 384–88.

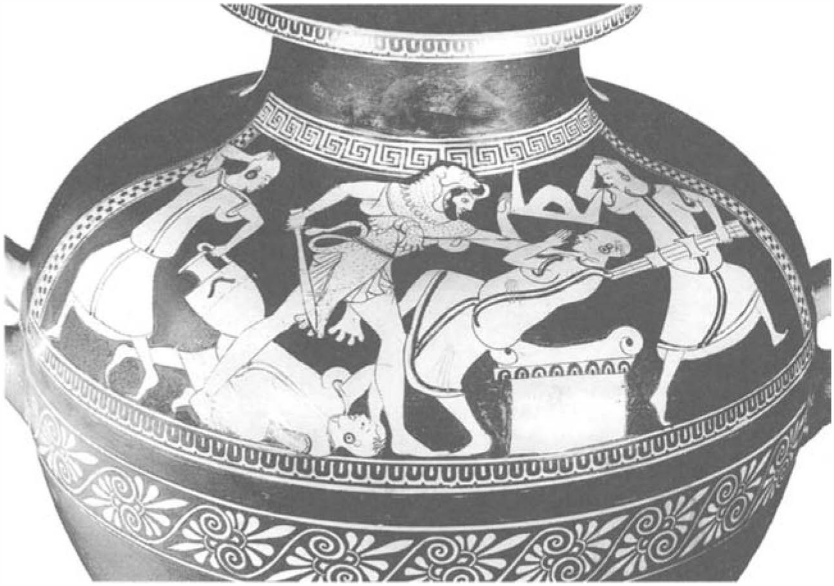

PLATE 4: Troilos Painter (Munich 2428), Attic Red Figure Hydria, c. 500 B.C. Reproduced by permission. Staatliche Antikensammlungen, Munich.

a mythological handbook, if that is how we might describe Pherecydes.[22] An important point here is that the story is used, as all myths are, in whatever way the creator felt necessary. There is room for flexibility. Similar flexibility can be seen in a comparison of Homer's story of the cyclops and Euripides' *Cyclops*, or perhaps better Aeschylus' presentation of Helen and Euripides' play *Helen*. Surely, we also think of the blatant and unapologetic manipulation of stories by Pindar, such as when he changes the account of the disappearance of Pelops in *Olympian 1*.

The comic sources can carry more weight in our examination because they represent works that focus specifically on this story. Why did the comic poets turn to Busiris for their tellings of the Herakles story? Surely there are many stories of Herakles that would serve a comic function well. Many of the labors would work, especially cleaning the Augean stables; the story of the Kerkopes would work nicely, or even, given the right author, like Euripides, the pathetic story of Admetus. Why is the Busiris story popular for comedy, both in the visual and verbal arts? Might we con-

[22] On the question of Pherecydes, see R.L. Fowler, "The Authors Named Pherecydes," *Mnemosyne* 52 (1999), 1–15.

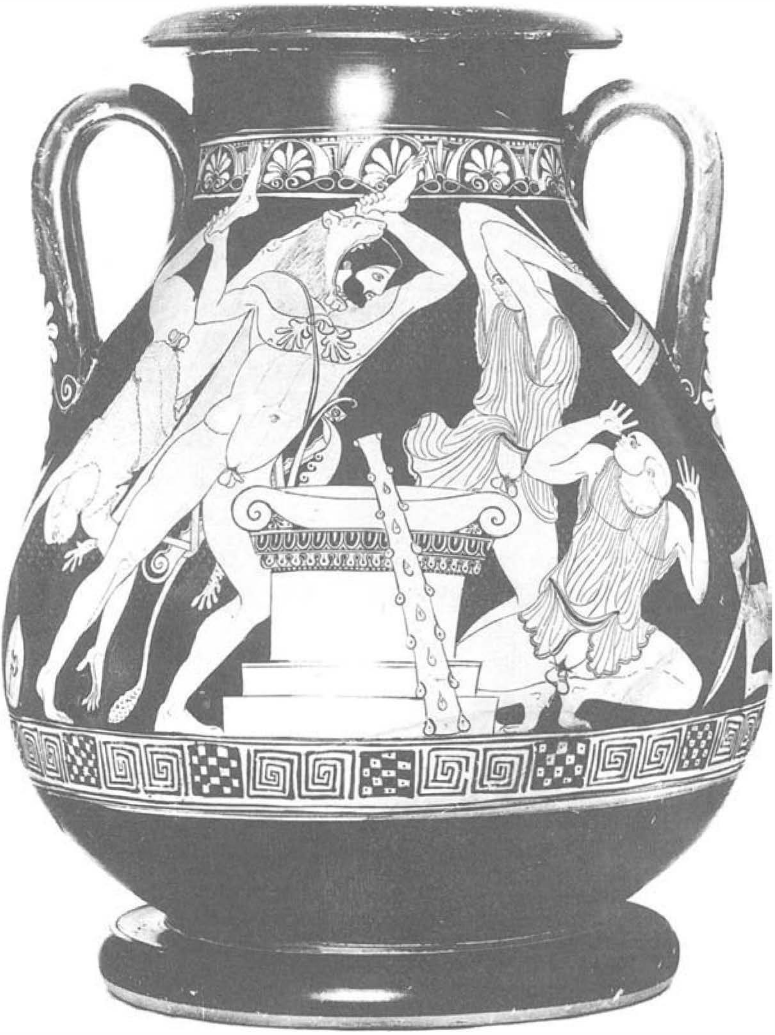

PLATE 5: Pan Painter (Athens 9683), Attic Red Figure Pelike, 480–460 B.C. Reproduced by permission. National Archaeological Museum, Athens.

clude that the telling of the Busiris story was really a cultural joke, perhaps even created as a reaction to Egyptian conquest stories? This is possible, though we can not say for sure. The conclusion is quite speculative and, therefore, tentative. At the very least, we can assert that in the late sixth and throughout the fifth centuries, the Busiris story, like many others, was open to variation and manipulation by the creative artist, whether visual or literary.

To complete the survey of the appearance of Busiris for our purpose, we need to continue into the fourth century. After Isocrates' discourse, which most date between 391–380, there is a second group of comic plays treating the theme. These date from 386–360 and are written by Antiphanes, Ephippus, and Mnesimachus.[23] There is also another group of vases that treat the theme, dating from 340–310.[24] How does Isocrates' discourse relate to this second outpouring of treatments of the theme elsewhere? That is an unanswerable question, but asking it can lead to interesting possibilities; I will return to this issue below.

In spite of the ghastly behavior of Busiris, or perhaps because of it, the story seemed to be a good source for comedy, in addition to its presence in the expected locations of myth handbook and Herodotus' historical treatment of Egypt. This notion of the comic background may be significant. It has been argued recently that Old Comedy bases its drama on a rather creative and potentially serious foundation.[25] The poet asks what would happen if a certain possibility were the case: What would happen if women were given charge? What would happen if I could get away from litigious humans? What would happen if professors' teachings moved to their logical conclusion? Of course, the playwrights know that these situations could not happen, but they offer a chance to ponder some possibilities. Tragedy may also offer this option: What would happen if women were as powerful as Clytemnestra, or Medea, or Electra, or Helen? The chance to ponder potentialities, however unlikely, in a dramatic and poetic context is important. The topics do not touch on reality, but they give us the opportunity to think about things in different ways.

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[23] I do not know of another literary source after Isocrates, save the comedians, until a treatment by Callimachus. Hiller von Gaertringen, "Busiris," says that Callimachus becomes quite influential for later presentations of the Busiris story (1076).

[24] New York 1984.11.7 (Circle of Darius, 340–320), Once Cal. Mkt IAC 3987 (Baltimore P., 330–310), and a vase by the Felton Painter, unnamed and undated by Trendall, but certainly late fourth by comparison.

[25] See D.M. McDowell, *Aristophanes and Athens* (Oxford, 1995), and D. Konstan, *Greek Comedy and Ideology* (Oxford, 1995).

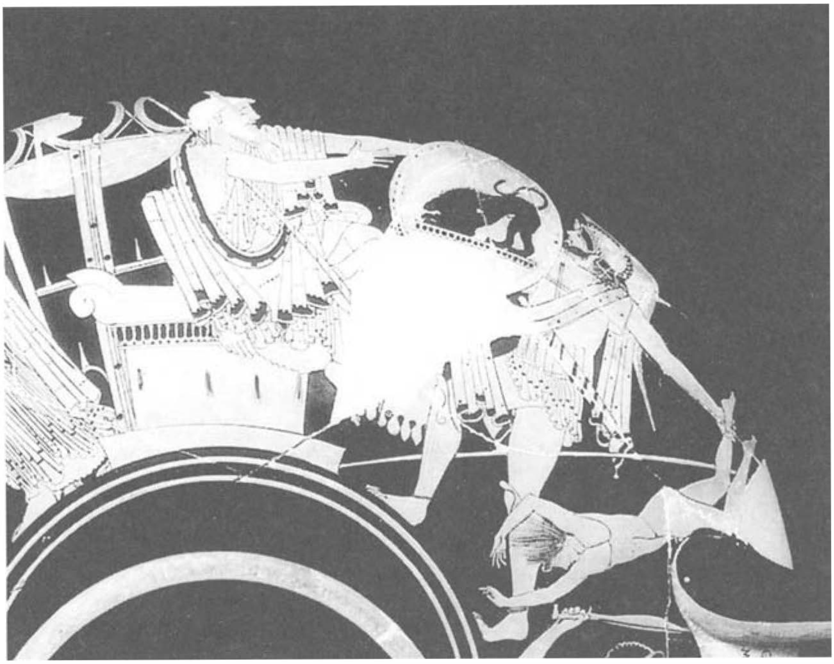

PLATE 6: Brygos Painter (Louvre G 152), Attic Red Figure Cup, 480–475 B.C. Reproduced by permission. Louvre Museum, Paris.

This interest in speculation characterizes sophistic rhetoric, too; John Poulakos talks about the importance of the possible, the δυνατόν, for sophistic thought.[26] Does Isocrates offer such possibilities in his prose discourses? These discourses have a connection with the social norms and questions of other earlier poetry, as I have argued elsewhere,[27] and the connection with the questions of comedy is no less likely. Isocrates in essence asks: What would happen to the polis if we thought of Busiris in a positive light? He then tries this possibility out. This can be seen in his treatment of Helen and Agamemnon as well.[28] Such an approach with Busiris here might be especially appropriate if Isocrates saw the changes happening in comedy as it moved from Old Comedy to Middle and New Comedy. We do not know how the later comedies presented Busiris, but we can make assumptions based on our reconstruction of Middle Comedy.

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[26] John Poulakos, "Toward a Sophistic Definition of Rhetoric," *Rhetoric and Philosophy* 16 (1983), 35–48, and *Sophistical Rhetoric in Classical Greece* (Columbia, 1995).

[27] Terry Papillon, "Isocrates and the Greek Poetic Tradition," *Scholia* 7 (1998), 41–61.

[28] Terry Papillon, "Isocrates and the Use of Myth," *Hermathena* 161 (1996), 9–21.

Middle Comedy makes the transition from the bawdy and hostile political satire of Old Comedy to the soft comedy of manners of New Comedy. Isocrates may have thought it important to keep such political questions alive as were common in Old Comedy. He would, of course, do this in his own manner.[29] The South Italian vases from the mid and late fourth century that show the Busiris story may support this notion by becoming simply formulaic, much as New Comedy did in other respects.

This connection with comedy, and the comic elements of vase painting, is admittedly quite speculative, as I pointed out above. I suspect, however, that even without the consideration of the influence of comedy, Isocrates would have valued the question: What would happen if we presented Busiris positively? And he would have wanted to propose such a discourse. I have argued elsewhere that Isocrates presents a kind of discourse that differs from what we call deliberative or epideictic. Isocrates uses what I call "hypodeictic" discourse that narrates in order to instruct, as he says in *Busiris* 44: "I talked about these things, not making a display (*ἐπίδειξις*) for others, but wishing to show for your benefit (*ὑποδεῖξαι*) how you must do each of these things. . . ."[30] This verb *ὑποδείκνυμι* (to make a display for the benefit of the audience) is one that Isocrates uses on a number of occasions with more than an epideictic focus, at least more than the limited way in which the tradition came to think of epideictic.[31] I choose to coin a new English word *hypodeictic* because the term *epideictic* is worn too thin by a limited sense of its scope in many people's minds and because it usually has a pejorative connotation that I think is inappropriate for what Isocrates does.

The positive and useful view of Busiris in Isocrates' discourse fits in with Isocrates' pedagogical aims in general. We know that Isocrates used only positive presentations of myth in his discourses.[32] In all the extended myths, Isocrates says nothing but positive things.[33] He avoids any questionable material about Paris, about Agamemnon, about Helen, about

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[29] On Isocrates and the Greek poetic tradition, see Papillon, "Isocrates and the Greek Poetic Tradition."

[30] *οὐ γὰρ ἐπίδειξιν τοῖς ἄλλοις ποιούμενος, ἀλλ' ὑποδεῖξαί σοι βουλόμενος ὡς χρὴ τούτων ἑκάτερον ποιεῖν, διείλεγμαι περὶ αὐτῶν. . . .*

[31] The verb can be seen in *Busiris* 44; *Nicocles* or the *Cyprians* 57; *To Philip* 12, 27, 111; *Epistle II* (to Philip) 11; *Panathenaicus* 78, 150 bis, 166, 170.

[32] Papillon, "Isocrates and the Use of Myth."

[33] This is true of all references to myth in the Isocratean corpus. The only negative references to myths are when they are meant to be very subordinated foils to positive treatments of other myths. The Amazons, for example, come off badly, but that is because they are always presented as a foil to the greatness of Herakles.

Busiris. The use of praise for a model is always positive and always useful. Isocrates does not use *ψόγος*, and this is because it is not useful as a model. His concept of discourse thus differs from Aristotle's notion of epideictic, where praise and blame can both be used as possible arguments. Isocrates sees discourse as a means to benefit the polis, as he stated in the opening of the *Panathenaicus.* He points this out to Polycrates when he says that he was not intending to show off, but intending to demonstrate for Polycrates' benefit how to create appropriate discourse: *ὑποδεῖξαί σοι βουλόμενος ὡς χρὴ τούτων ἑκάτερον ποιεῖν* (44). Isocrates uses the verb *ὑποδείκνυμι* in contexts of showing for a benefit.[34]

Isocrates presents a form of discourse that tries to bring adherence and action through positive images. His emphasis on positive figures gives the members of the audience models that they might view and emulate and thus advance themselves. The use of Herakles as an exemplar for Philip demonstrates this most vividly. To praise Herakles because he is a model of right behavior, not to mention a family relation to Philip, is of great advantage when Isocrates tries to convince Philip to act in a way worthy of his heritage (*Philip* 109–12). Isocrates presents Herakles in order to give Philip a pattern upon which to shape his life and actions. Isocrates explicitly states that this is his purpose in 113:

> I have gone through these things for you for the following reason, that you might know that I am calling you through this letter to such great deeds as your ancestors appear to have judged the best in their actions. Therefore, while all who are wise must set up a very good example and then try to become like it, this is especially fitting for you. Since you have no need to employ external examples, but have an example from your own family, how is it not likely that you will be goaded by him [Herakles] and will work so that you might show yourself similar to your ancestor?[35]

Just before this passage, Isocrates focuses on a specific part of the Herakles story, declining to recount anything that might be questionable about his life. He tells the story of how Herakles unified Greece and led the Greeks

[34] On the meaning of this verb, see Papillon, "Isocrates' *Techne*," 158–59.

[35] *τούτου δ' ἕνεκά σοι περὶ τούτων διῆλθον, ἵνα γνῷς ὅτι σε τυγχάνω τῷ λόγῳ παρακαλῶν ἐπὶ τοιαύτας πράξεις, ἃς ἐπὶ τῶν ἔργων οἱ πρόγονοί σου φαίνονται καλλίστας προκρίναντες. ἅπαντας μὲν οὖν χρὴ τοὺς νοῦν ἔχοντας τὸν κράτιστον ὑποστησαμένους πειρᾶσθαι γίγνεσθαι τοιούτους, μάλιστα δὲ σοὶ προσήκει. τὸ γὰρ μὴ δεῖν ἀλλοτρίοις χρῆσθαι παραδείγμασιν ἀλλ' οἰκεῖον ὑπάρχειν, πῶς οὐκ εἰκὸς ὑπ' αὐτοῦ σε παροξύνεσθαι καὶ φιλονικεῖν, ὅπως τῷ προγόνῳ σαυτὸν ὅμοιον παρασκευάσεις;*

against Troy (111–12). This is the sort of model he sets out for the audience to consider, and it fits with Isocrates' broader political goals.

Given these ideas on the positive and useful nature of the images that Isocrates presents, let us return for a moment to the context of Isocrates' *Busiris.* As mentioned earlier, Isocrates' discourse on Busiris is usually dated to the early part of his career, as a sort of advertisement for his school. As such, it would best be placed in the period from 392–380, when Isocrates first began to teach. This dating is very subjective, of course.[36] The tradition tends to date frivolous work early in an author's career, and we call them juvenilia.[37] There is no good reason to date the *Busiris* or the *Helen* early, and thus the issue of dating is open. If that is the case, then we might do well to consider the "dialogue," if you will, that was going on in the fourth century about Busiris. We have comedies dating from the years 386–360 and vases dating to the period from 340–310. Now, the vases are clearly too late to be much of a factor, unless Isocrates composed the *Busiris* at the end of his life, a hypothesis that I do not find likely. They do, however, represent a characteristic of mid- to late-fourth century South Italian vases. How do these vases relate to what Athenian potters were doing in the mid-fourth century? Would that we could assess this.

The comedy is more pertinent. If Isocrates' discourse reacts to Old Comedy, as I postulated earlier, can Middle Comedy react to Isocrates? If so, the discourse would be dated early in Isocrates' career, confirming what tradition has always said, though for other reasons. But perhaps Isocrates is again reacting to comedy, this time the weak presentations of Middle Comedy. If so, then the date of the *Busiris* would need to be pushed back to the 370s or 360s or even later. If my sense of the seriousness or importance of Isocrates' presentation is correct, this is not a rhetorical or pedagogical

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[36] Van Hook, *Isocrates*, dates it to 390–385; Jebb, *Attic Orators*, to 391–390. Blass, *Die Attische Beredsamkeit*, puts it in 391; Benseler, in 393 (*Isocratis Orationes* [Leipzig, 1851]). Pfund, according to Blass (2.248, n. 3), also dates it to 393; Matthieu and Brémond put it after 390. According to the latter, *Isocrate, Discours* (vol. 1, 184, n. 6), E. Meyer dated the speech to a period after 373. The evidence of Jebb (vol. 2, 94–95) for 391 is neatly worked out, but nothing more than a hypothesis. That Plutarch refers to Jason as *τυραννήσας* is a difficulty for Jebb. Jason was not *ταγός* until 374. That both Polycrates and Gorgias have to be alive is not clear from the evidence. Jason could prefer the ideas of Gorgias to Polycrates, as two prominent sophists, when he is *ταγός* in 374 or later. Jebb says that the *Busiris* speaks of Polycrates as a beginner, but I see no evidence of this. I do not think that Isocrates would attack someone who is not a prominent *rhetor*, which Jebb says Polycrates did not become until 388 (though the reason for this dating is not stated).

[37] See Terry Papillon, review of *A Handbook of Classical Rhetoric in the Hellenistic Age*, by Stanley Porter, *American Journal of Philology* 120 (1999), 308–11.

problem. Isocrates' discourse argues for a noble leader, as the *Helen* argues for a unified Greece.[38] This could fit into his call for leadership that we see in the *Panegyricus* (380) or even later in the *Philip* (346).[39] With the latter, we get close to the period of the later vases. This is all, of course, speculative, but it offers intriguing possibilities, especially for the dating.

Aside from the negative and limited connotations of "epideictic," another reason I have chosen to coin a new English term is to highlight an important aspect of Isocratean discourse. Isocrates attempts to avoid the compartmentalization that fourth-century rhetoric put upon it, as can be seen in the work of Aristotle or Anaximenes. I think that Isocrates fights this tradition quite consciously. He does not believe that discourse should be broken into three genres (or seven, in Anaximenes). At most, Isocrates would recognize discourse that is inside the lawcourts as opposed to discourse that is outside them. He did not want to divide the latter category any further. Discourse outside of the lawcourts looked to the future and had as its goal the good of the community.[40] Dividing this category into deliberative and epideictic, as Aristotle did, was not a good idea in Isocrates' mind.[41] Indeed, we can see the difficulty that Aristotle himself has with the concept of epideictic: His divisions of judge and time frame in *Rhetoric* 1.3 get him into some trouble, and he recognizes the similarities of deliberative and epideictic in 1.9.[42] Everyone afterward also struggled with the concept of epideictic, how to define it, how to delimit its topics, and what its value was.

Isocrates, in contrast, chose to set out images of correct behavior to inspire the audience and arguments to push them forward. In this he may follow in the tradition of Pericles, who presents a famous vision of Athens in the pages of the history of Thucydides. The picture painted there does not necessarily represent Athens as it really was, but it certainly presents Athens as Pericles would have liked it to be. In a like manner, Isocrates

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[38] George Kennedy argued this long ago; "Isocrates' Encomium of Helen: A Panhellenic Document," *Transactions of the American Philological Association* 89 (1958), 77–83.

[39] As noted above (note 36), E. Meyer dates the *Busiris* to 373. Mathieu and Brémond find it hard to put it later than 385 because of Isocrates' work on the *Panegyricus*, but the two works could be coincidental, especially since the *Busiris* would be significantly less taxing.

[40] See Takis Poulakos, *Speaking for the Polis: Isocrates' Rhetorical Education* (Columbia, 1997), 9–25.

[41] Papillon, "Isocrates' *Techne*."

[42] George Kennedy, tr., *Aristotle On Rhetoric: A Theory of Civic Discourse* (Oxford, 1991), 85, n. 176, points out the difficulty of the passage in 1.9 on the relation of deliberative and epideictic and notes that Kassel brackets the whole section as a later insertion of Aristotle.

presents a positive view of Busiris, a view that does not coincide with other tellings, to be sure, but one that has its own value, because it presents a leader that can inspire. It is true that Socrates complains about the effect of funeral orations in the *Menexenus* (234b-235c), where he emphasizes the lack of reality. The speaker always makes the dead and the city greater than they actually are, and this whisks Socrates away on a glorious high, from which it takes some time to come down. He sees this as a fault in oratory and criticizes it in the dialogue. In another respect, however, such images and inspiration could also be an attempt to get the individuals in the audience to see themselves as better than they are in order that they might behave or become better. This would fit in with Isocratean notions of the use of examples, as I am arguing here.

It is clear that Isocrates' specific positive treatment of Busiris does not have much lasting effect on later treatments. We can point to Aelius Theon, the first-century author of progymnasmata and admirer of Isocrates, who shows his influence. Hiller von Gaertringen says that Theon "stark auf Isokrates Rücksicht nimmt."[43] When Theon discusses the narrative and the use of contradiction, he points out the example of Busiris: "second, we shall take the topic of the impossible, showing that the fact cannot be as the sources say. . . . An example is a reply to those saying that Heracles killed Busiris; for according to Hesiod, Busiris was eleven generations older than Heracles."[44] This parallels Isocrates' point (*Busiris* 36–37), but is slight evidence upon which to build an Isocratean influence. Isocrates focuses on Perseus instead of Herakles and mentions that the dating of the heroes in these generations is agreed on by all historians.

We must look elsewhere, it seems, for the influential telling of the Busiris story. Early scholarship had seen Euripides' *Busiris* as the main source of information for later presentations. Hiller von Gaertringen, however, as noted earlier, argues that it was the treatment of Callimachus that became influential. Whichever is true, it is not Isocrates' version, but the version we recognize from Herodotus, Apollodorus, or Ovid that became the traditional story. Isocrates' version does not stick. This would argue against his influence on the tradition. We should distinguish carefully, however. It is true that Isocrates' treatment of this specific myth does not carry on. However, there still exists the possibility that on a larger scale, Isocrates' interest in progress by praise may have continued, even if this specific example did not. Erasmus' *Praise of Folly*, for example, may

[43] RE 3.1,1074.

[44] Translated by George Kennedy in *Progymnasmata*, 29.

fall into such a line.[45] The larger question of the influence of Isocrates' compositional technique remains to be addressed, however, but that is the topic for a larger study in the future,[46] perhaps called "The Isocratean Tradition in Ancient Rhetoric."

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[45] The prefatory letter to this work, by the way, contains a reference to the traditional view of Busiris.

[46] A useful step in this direction has recently been made by Bons, *Poetikon Pragma.*

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III
The Orator in Action: Rome

CHAPTER 5

Julius Caesar, the Orator of Paradox

by A.D. Leeman

In the preface to the lives of Alexander and Caesar, Plutarch states: "The most glorious exploits do not always furnish us with the clearest discoveries of virtue or vice in men; sometimes a matter of less moment, an expression or a jest, informs us better of their characters and inclinations. . . ."[1] In the same attitude I myself will make use of sources concerning Caesar's private life, including his sex-life, in an effort better to understand his enigmatic personality and the astounding influence he exercised on his fellow men. The biographies of Suetonius and Plutarch will provide my starting points. I hope that this will enable me to avoid the beaten tracks in one of the most hackneyed subjects in ancient history.

That Caesar was extremely fond of women is not remarkable in itself. Most men are fond of women, and most powerful men are powerfully fond of them. There is apparently a close link between power and sex. However, what is remarkable in Caesar's case is the wide range and the nature of his conquests and the fact that in exploiting them he gratified at the same time his lust for power and his lust for lust. In chapters 50–52 of his biography Suetonius gives us an enumeration of Caesar's lovers, including a number of the noblest women in Rome, some married to leading politicians of his day.[2] Caesar himself first married Cornelia, daughter of the *popularis* Cinna, and after her death Pompeia, the woman whom

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[1] *The Lives of the Noble Grecians and Romans*, tr. John Dryden, rev. Arthur Clough (New York, 1979), 801. The other translations I quote are based on the Loeb editions.

[2] Suetonius names "many illustrious women, among them Postumia, wife of Servius Sulpicius, Lollia, wife of Aulus Gabinius, Tertulla, wife of Marcus Crassus, and even Pompey's wife Mucia . . . But beyond all others Caesar loved Servilia, the mother of Marcus Brutus" and her daughter Tertia.

he divorced since "Caesar's wife should be above suspicion"[3]—my first, but by no means my last example of the almost unbelievable cynicism of which Caesar was capable. Finally, he married the faithful and devoted Calpurnia. However, his most remarkable love affair was that with Servilia, stepsister of his enemy Cato and wife of M. Brutus senior. Later she married Silanus who as an ex-consul in the Catilinarian session of the senate first supported the death penalty for the conspirators, proposed by Cicero, who was consul, but changed his mind after Caesar's intervention in favor of a lifelong imprisonment. Cato spoke against Caesar's *sententia* so forcefully that the senate authorized Cicero to kill the Catilinarians.

Less known is a curious incident that happened during the session; it is recorded by Plutarch in his biography of M. Brutus (5). A little note was handed to Caesar from the outside, whereupon Cato cried that Caesar was obviously receiving instructions from the conspirators, with whom he was indeed suspected of being in league. Amidst the tumult Caesar handed the letter to Cato, who found to his dismay and fury that it was a wanton bit of writing from his sister Servilia, Silvanus' husband; "So notorious was Servilia's passion for Caesar," Plutarch concludes. In the same context he tells us that their affair had already started much earlier, when they were both fifteen years old, in the very year of Servilia's marriage with Brutus senior. Plutarch adds that Caesar had some grounds for believing that M. Brutus was in fact his own son. We shall come back to this later. According to Suetonius, even Servilia's own daughter was involved in this reckless and lasting passion, which was not impaired by Caesar's numerous liaisons with other women of the same social circles—and with many foreign women as well, among them Cleopatra, who called their son Caesarion, and Eunoe, queen of Mauretania (50–52). Caesar's promiscuous affairs with married women in Gaul gave rise to the famous lampoon sung by his soldiers during the triumphal procession of the victorious army: *urbani servate uxores: moechum calvum adducimus* (Suet., *Caes.* 51). "The bald adulterer": That does not sound like a Casanova!

What did Caesar look like? What was the secret of his charm? Suetonius tells us that he was tall, handsome, with lively eyes; but his constitution was not strong (45). Plutarch contrasts his fits of weakness and epileptics with the extreme hardships to which he often subjected his body (17). Suetonius also tells us how he suffered from his baldness, which he tried to cover up by carefully arranging his remaining hairs and by wearing the laurel wreath that the Roman people had given him the right always

[3] This phrase, which has become proverbial, is based on Plut., *Caes.* 10.

to wear (45). We should also remember that *caesaries* is the Latin word for luxuriant hair, and fancy the jokes he had to endure. Suetonius stresses the meticulous care Caesar devoted to his whole outfit and outer appearance. According to Plutarch (4) Cicero was the first to notice the strange, paradoxical contrast between this "feminine" care and his "masculine" ambitions: "But," said Cicero, "when I see his hair so carefully arranged and observe him adjusting it with one finger, I cannot imagine it should enter into such a man's thoughts to subvert the Roman state."

This feminine side of his personality is also revealed by a sexual feature lampooned by his soldiers with the song (Suet., *Caes.* 49) *Gallias Caesar subegit, Nicomedes Caesarem* . . . , alluding to the notorious homosexual relationship that Caesar had entertained with King Nicomedes in Asia Minor; apparently here he played the passive, female role (*subegit*). There may have been a similar relationship between Caesar and his lieutenant Mamurra, nicknamed "Mentula" (Mr. Prickwick) in Catullus' poems (cf. 57). In a speech of the elder Curio the opposite sides of Caesar's sexual nature are contrasted in a pointed formula (Suet., *Caes.* 52): *omnium mulierum virum et omnium virorum mulierem.* This paradox sums it all up: Caesar's sexual inclinations were at the same time extremely male and extremely female. This paradoxical duplicity in his basic instincts and in his whole nature could easily have torn him apart and condemned him to a life of dissolution and inertia. Instead, his powerful intellect and ambition exploited this basic paradox in his nature, of which he must have been keenly conscious. He could ever bewilder and surprise his fellow men by changing registers in his behavior toward them. He could use these possibilities to manipulate them by taking them unawares, and I think that there is ample proof that he did. It is time that I say something about my concepts of paradox(ical) and "paradoxicality."

First, *paradoxical* can mean "what happens contrary to expectation." Next to this "diachronic" use, *paradoxical* can also be used in the "synchronic" sense about a thing or a situation in which contradictory elements are present, e.g., human nature and human society with their egoistic and social, rational and emotional, constructive and destructive tendencies and faculties. It is not difficult to see how easily these paradoxical elements can be exploited by a cynical man of genius. In the so-called Stoic paradoxes they are used to make visible a lower and a higher level of reality; in the latter the paradox is "solved," for example, "even if he is a slave, a wise man is a king." These types of paradoxes could be conceived as embedded in the more existential paradox of the unfathomable mysteries of human fate and destination, of nature and the cosmos, of the

"divine being" itself, in which only a formula like *credo quia absurdum* can suggest the paradoxical riddles.

All these kinds of paradoxes imply a breach in the ideas of causality and of unity, that is, in our basic human concepts and assumptions in interpreting reality. Rhetorically speaking, causality and unity are in the realm of *logos*, whereas paradoxes belong to the realm of *pathos*. I think that Caesar was keenly aware of his personal paradoxes in general. At the same time he formulates the paradoxical in the style and language of *logos*. This hidden persuader was Caesar's personal achievement in his "rhetoric of the paradox."[4] But this is for later.

At an early age Caesar must have made the basic choice for his political career. Though belonging to one of the noblest patrician *gentes*, he paradoxically preferred to follow the political line of his uncle Marius and his father-in-law Cinna, who themselves pursued that of the noble brothers Gracchus. Unlike these earlier *populares*, Caesar avoided all rashness and knew how to bide his time. In fact, his first major public appearance took place in the Catilinarian session of the senate mentioned above, when he was almost forty years old. His main argument against the death penalty was that it was contrary to the *mores maiorum*—as if he ever showed any reverence for these, if it was not to his own advantage. He even invoked the aid of philosophy: In the miserable situation of the conspirators death was not a punishment, but a liberation from evil and, therefore, too mild a punishment. (That one was for Cato.) Instead of menacing the advocates of the death penalty, he feigned to warn them for their own benefit. As we know, Cato won the debate, but Caesar had voiced the political principles of the *populares* and placed a ticking time bomb under the further career of Cicero in the very hour of his greatest triumph. Caesar's masterly speech, as rendered—and inevitably adapted—by Sallust (*Cat.* 51), is a subtle tissue of sometimes bewildering paradoxes. Servilia must have enjoyed it greatly; perhaps she even enjoyed the idea that Caesar passed on her *billet d'amour* to her stern stepbrother Cato.

In the deservedly famous synkrisis, written, it should be remembered, after the Ides of March, Sallust (*Cat.* 54) makes a comparison between the two *virtutes* of Caesar and of Cato. We find as key words on Caesar's side *mansuetudo* and *misericordia* as against Cato's *severitas*, and *facilitas* as against *constantia*. Sallust had profited by this side of Caesar's *virtus* during his own political career, but now he also has an eye for the other side of

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[4] In traditional rhetoric the paradox played only a limited role, e.g., in the discussion of humor and wit (cf. Cic., *De orat.* 2.216–90).

the coin, as already *facilitas* (flexibility) half-suggests and as is confirmed by Cato's wish *esse quam videri bonus*, suggesting the opposite for Caesar. In fact, Caesar used kindness and clemency, the famous *clementia Caesaris*, as a political and social tool, to be exchanged for cruelty and harshness if need be. One instance had been the genocide that he committed in Gaul, which induced Cato to propose Caesar's extradition (Plut., *Caes.* 22). On the other hand, his application of clemency worked so well that it got the upper hand in his reputation. This was especially the case since he had the good sense to pursue a striking policy of *clementia* after his victory in the Civil War. Even a temple was consecrated to the brand-new goddess Clementia. It is remarkable that in 63 B.C. Caesar already had won the much desired office of pontifex maximus (Plut., *Caes.* 7), which gave him the—as he foresaw—very rewarding highest influence in matters of religion and the image of having the gods on his side, a great help for any politician in any period of history. At the same time, it was a paradoxical achievement for a man who showed reverence for gods and miracles only if it was to his advantage, as we shall see.

We stated that Caesar showed a remarkable patience in biding his time. Now we can add that when the time had come he could act with incredible and totally unexpected speed and energy: the *veni vidi vici* effect, itself a formula of typically Caesarian pointedness. In a letter Cicero called him a *τέρας horribili vigilantia et diligentia*; and Suetonius remarks that it is difficult to say what was most remarkable in his military actions, his prudence or his daring.[5]

How do our observations on Caesar's paradoxical capacity to act in unexpected and totally opposite directions work out in his oratorical achievements, especially in his *elocutio?* Thanks to Cicero's rhetorical works, in particular, the historical survey in his *Brutus*, and to Quintilian (*Inst.* 10.1), Roman oratory is by far the best known genre of Latin literature. Unfortunately, however, all of the about fifty remaining speeches of the republic are Cicero's. The other far over one hundred orators discussed or mentioned in the *Brutus* are at most represented by fragments. This is an extremely one-sided, not to say paradoxical situation. I repeat what I confessed in my *Orationis Ratio:* I would gladly have exchanged ten or even twenty speeches of Cicero for orations by Caesar, Asinius Pollio, and others. We also would have got a better understanding of Cicero's own speeches if we could compare them with those of his rivals. In antiquity the greatest of these rivals was considered to be Caesar, as we see in Quin-

[5] *Ad Att.* 8.9a; Suet., *Caes.* 58 (*cautior an audentior*).

tilian's comment *C. vero Caesar si foro tantum vacasset non alius ex nostris contra Ciceronem nominaretur.*[6] Of course, we do possess his *Commentarii*, in which Caesar has incorporated a number of his own speeches to his troops, his staff, or foreign ambassadors, but, alas, he adapted these to the style of his commentaries and rendered them in *oratio obliqua.* This largely deprives them of their original directness and oratorical power.

About the stylistic aspect of these commentaries, we possess a curious and revealing evaluation in Cicero's *Brutus* (262): *nudi enim sunt, recti et venusti, omni ornatu orationis tamquam veste detracta.* Cicero argues that it looks as if Caesar provides only the raw material for a real history; however, if one tries to embellish his text for this purpose one discovers that one can not manage to make it better. Cicero shrinks before the obvious conclusion that its beauty paradoxically resides in its lack of "beauty." Instead, Cicero concludes that in historiography nothing is more pleasing than brevity, clear and correct, which is completely at variance with his ideal of historical style in other contexts, as we see at *De oratore* 2.64, where he suggests that it should avail itself of the more pleasant resources of *ornatus*—and certainly not of *brevitas.* Apparently Cicero is puzzled by Caesar's historical style with its paradoxical combination of plain simplicity and charm (*dulcius*).

Now I will try to go into some of the main thematic aspects of Caesar's adapted versions of his speeches, confining myself to speeches in a hazardous situation, in which soldiers and officers were losing their usual confidence in, and loyalty to, their commander.[7] A characteristic case is found in the first book of the *De bello Gallico* (40). Caesar wants to march against the formidable German king Ariovistus, of whom his soldiers and officers stand in awe. I quote the end of his speech to the reluctant troops: "that he would execute the plans he had intended for later without delay, and break up at the end of the night; thus he would see as soon as possible whether honor and duty or fear were uppermost in their minds; in case nobody would follow him he would break up with the tenth legion only, for he knew that them he could trust." Caesar goes on to tell his readers that "this speech caused a miraculous reversal in their moods . . . ; before

[6] Quintilian, *Inst.* 10.1.114; he goes on: *tanta in eo vis est, id acumen, ea concitatio, ut illum eodem animo dixisse quo bellavit appareat.*

[7] In general, I refer to the excellent analytical treatment of the speeches in P. Fabia, *De orationibus in commentariis Caesaris de bello Gallico* (Paris, 1889), esp. 33ff., in the chapter entitled *Quo consilio Caesar orationes adhibuerit.* On the speeches in hazardous situations, when the soldiers were losing their confidence, see particularly 51–53. Apart from the *Gal.*1.40 he deals with 7.52.

all the others, the tenth legion thanked him for his trust in them." Caesar's rhetorical tactics are clear: Instead of a postponement of the expedition he paradoxically confronts them with an acceleration. At the same time he makes a distinction and a division within the unity of the troops and thus splits the opposition. In his whole approach Caesar combines opposites—praise with blame, companionship and indulgence with a harsh and humiliating treatment. The result of his often unpredictable and bewildering approach was that the rough and primitive minds of his soldiers were easily manipulated to complete malleability.

These elements are already present in Plutarch's anecdote about his behavior, when, in the time of his friendship with king Nicomedes of Bithynia, he was captured by pirates (*Caes.* 2). They asked a ransom of twenty talents, whereupon he laughingly answered that he was worth fifty, which he then collected from his friends. In the meantime he amazed, amused, and bewildered them in all sorts of ways, and thus became very popular with these rough guys. But after he was set free he manned some ships, captured their ship and all their money, and had them all crucified.

In chapter 65 of his biography Suetonius pays attention to his paradoxical behavior towards his soldiers: "he treated them with equal strictness and indulgence"—and both to an extreme degree. At the end of this chapter he tells us that in the assembly Caesar did not address them with the usual *milites*, but with *commilitones* (comrades), a striking example of his wonderfully effective choice of words, on which his fame as an orator mainly rested. Imagine the warm feelings of the simple soldiers thus addressed by their venerated commander; imagine also the trumpet-like sound of these syllables at the start of a speech in the open air amidst an unruly audience.

Thus, we are back to our main question: what Caesar was like as an orator, but this time from the stylistic point of view. Though, of course, we have none of Caesar's own original speches, we do have an intriguing passage on the matter in Cicero's *Brutus* (252–54), which deserves our close attention.[8]

The immediate cause of a special treatment of Caesar, the only living author awarded this privilege in the *Brutus*—apart from Cicero himself, of course!—appears in 253. While travelling from Gaul to Italy, Caesar miraculously had found time to write a linguistic work, *De analogia*, from

[8] I dealt with Caesar as an orator in *Orationis Ratio* (Amsterdam, 1963), 156–59. For more details and argument I refer to this passage. Here I limit myself to the aspect of "paradoxicality."

which the following characteristic fragment remains: *habe semper in memoria atque in pectore, ut tamquam scopulum sic fugias inauditum atque insolens verbum.*[9] Caesar had dedicated this work to his former enemy Cicero, with whom he obviously wanted to keep on good terms, and he knew the infallible means to achieve this—by flattery. He addressed him as *paene principem copiae atque inventorem, bene de nomine ac dignitate populi Romani meritum.* This sounds wonderful, but there is a snake in the grass. Instead of *princeps eloquentiae* he wrote *princeps copiae* (abundance), thus pointing at an element of which Cicero himself was very proud, but which was the main subject of criticism among his literary opponents, the so-called Atticists, who preferred, like Caesar, a terser and more sober eloquence. Remember that the *Brutus* was partly or mainly directed against these very Atticists. Though Cicero was susceptible enough to Caesar's flattery, he reacted in a rather subtle way (if I see it right) in *Brutus* 261: He calls Caesar's famous *elegantia* (not "elegance" but "refined choice of words,"[10] advocated in *De analogia*) a requisite for any Roman citizen. The orator's *virtutes elocutionis* are not just *dilectus verborum* and *perspicuitas*, but most of all *ornatus* (and *decorum*). Cicero states that Caesar is indeed able to apply the *ornamenta* (*copia*!), as well, and for that reason he is a great orator. Thus, Cicero praises him for what he sometimes, for example, in the epideictic genre, practiced, but what he did not himself consider the essence of good oratory, that is, the *elegantia* that Cicero discards. It is the mutual polemical undertone that lends piquancy and pointedness to what seems to be an instance of *admiration mutuelle.* Quintilian goes one step further and formulates Caesar's stylistic ideal as a paradox:[11] *exornat haec omnia mira sermonis, cuius proprie studiosus fuit* [i.e., *De analogia*] *elegantia.* His eloquence finds its *ornatus* in the *elegantia* itself. Cicero, however, had stated that Caesar's greatness as an orator rested, not on his *elegantia*, but on the fact that he added *ornatus* to *elegantia.*

After these observations on Caesar's style suggested by his choice of the wonderfully effective term *commilitones* we shall now turn to the events during the Civil War and examine the role that Caesar's "rhetoric of the paradox" played in it. The actual crossing of the Rubicon had been effec-

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[9] Quoted in A. Gellius, *Noctes Atticae* 1.10.4.

[10] I believe Deichgräber is wrong in his conception of the term; see K. Deichgräber, "Elegantia Caesaris, Zu Caesars Reden und Commentarii," *Gymnasium* 57 (1950), 112–23. Accordingly, his examples should be re-interpreted in the sense I give it here. For the real state of affairs, see *Rhet. Her.* 4.17: *elegantia . . . tribuitur in Latinitatem et explanationem (pure et aperte).*

[11] *Inst.* 10.1.114; Butler's translation is misleading and blurs the paradox.

tuated by a miraculous appearance (Suet., *Caes.* 32). It is a safe guess that it had been staged by Caesar himself (not too difficult a thing for a pontifex maximus); I suppose he paradoxically considered this as a *pia fraus.* After thus having left the casting of the dice to divine powers, Caesar still felt that he had to reassure his troops, which he did, by posing not as the heroic savior of the fatherland, but as a pitiable victim of the injustice of his adversaries. By rending his garments and shedding tears he played upon their pity at exactly the moment when he had committed the worst political crime imaginable.

After a true blitzkrieg, in which he chased Pompey's troops across the Adriatic, Caesar was unable to follow him at once to Greece because of a lack of ships. Instead of waiting for new ships he did the opposite and went to Spain to destroy the army left there by Pompey, in a province where Caesar was still well remembered for his excellent propraetorship in 61 (Plut., *Caes.* 12).

The next trouble with his own soldiers occurred many months later, when, instead of rest and demobilizations, they foresaw a new series of campaigns in far-away regions of the vast empire. Cassius Dio (*Hist. Rom.* 21.26–35) tells us that Caesar saw himself obliged to address them, which he did in the following way. First, he praises those soldiers who had been less active in the rebellion. Only then did he address its instigators, the ninth legion, and threatened them with a harsh punishment—decimation. In the ensuing consternation and dismay he ordered them to compose a list of 120 ringleaders, to whom he would confine the decimation, and at the same time he postponed it until the moment when all troops would be concentrated in Brindisium. This speech ended the mutiny and restored loyalty and discipline, again by a pardoxical succession of measures and a successive isolation of the main culprits. In fact, the decimation never took place. By the way, we do not find a word about this mutiny in Caesar's own *Commentarii de bello civili:* He also was a master of the paradoxical "rhetoric of silence."

For almost two years all went well. Caesar's troops followed their commander in a series of breathtaking campaigns in the East. Then the exhausted veterans, returning to Rome and expecting the promised demobilization and their parts of the booty, instead saw themselves faced by a new expedition, this time to Africa, where after Pompey's violent death in Egypt a strong republican army remained under the command of Scipio and M. Cato. A formal mutiny followed, which Caesar managed to check in a scene described by the often underestimated Greek historian Appian (*BC* 2.92–94) with such visual liveliness that it reads like a mod-

ern movie scenario.[12] I will here confine myself to a much abbreviated version of Appian's extensive rendering. I hope that it will confirm all I have argued so far concerning the nature of Caesar's oratorical power and technique.

Unexpectedly Caesar appeared in the Campus Martius, where the mutinous troops were gathered, and mounted the platform. Instead of a formal speech he just asked them what they wanted. Awed by his sudden appearance, the soldiers did not dare to mention the distribution of the booty and merely asked for their dismissal. Against all expectations Caesar answered: "All right, I dismiss you; and I shall fulfill all my other promises—he alludes, of course, to the booty—when I shall have returned to Rome for my triumph thanks to the help of other men." A general silence ensued. The soldiers were ashamed, but also jealous of those "other men," whom the African booty would not escape. They still hoped that their commander would make further allowances because of his need for troops, but he, too, remained silent. After a while, however, he signified that he would make a formal speech. But he did not address them with his usual *commilitones*, not even with *milites*, but with *quirites*, the formal, age-old address of a meeting of Roman civilians. In dismay, the soldiers corrected him by shouting *milites*, *milites* (not, of course, *commilitones*); but Caesar turned away and left the platform. The first word of his speech was also the last one. After a moment of bewildered silence, cries arose demanding a punishment of the instigators of the rebellion. After a while, Caesar returned to the platform, and at long last he complied with their loud cries asking to be taken with him to Africa.

So after all we do possess one complete and authentic oration of Caesar! What it lacks in quantity is made up for in quality and persuasive power. The "paradoxicality" of Caesar's whole performance in the Campus Martius again manipulated the primitive minds of his soldiers, who were finally relieved to feel themselves, perhaps, again accepted as their commander's *commilitones*.

So to Africa they crossed to face the strong republican army under Cato and Metellus Scipio, whose position was not based on any particular human, political, or military qualities, but merely on his social relations as a descendant of the great family of the Scipiones. Moreover, there circulated oracles that a Scipio could never be beaten in Africa. Our pontifex

[12] Part of this quality may be due to his probable source, Asinius Pollio's history of the Civil War. This would confirm the view that the loss of Pollio's work is one of the saddest gaps in the classical tradition.

maximus managed to find among his own soldiers a worthless fellow by the name of Scipio, nicknamed Salvito (buffoon?), and promptly—and paradoxically—appointed him as a member of his staff (Suet., *Caes.* 59). This served the double purpose of reassuring his superstitious soldiers and of ridiculing the proud and vain Metellus Scipio.

Then the rumor spread that king Juba of Numidia was on his way with a huge army to join the republicans. Suetonius has preserved a precious fragment of Caesar's speech to his panicking soldiers (*Caes.* 66): "Let me tell you that within the next few days the king will be here with ten legions, thirty thousand horsemen, some ten thousand light-armed men and three hundred elephants. Therefore, some of you may as well cease to ask further questions or make surmises. They may rather believe me since I know the truth (*compertum habeo*). Otherwise, I shall surely have them shipped on some worn-out craft and carried off to whatever shores the wind may blow them."

This time, the paradox of Caesar's manipulation also reveals his degree of cynicism. Instead of reassuring his soldiers by reducing the size of Juba's army, as he had done, for example, in the case of Ariovistus, he exaggerated it enormously; at the same time he scorned their fear. Thus, he turned that *pathos* into an heroic *pathos* of Roman self-confidence. The result was that his troops gained a decisive victory near Thapsus. Cato committed his Stoic suicide, to which Cicero had the courage to react with an ardent *Laus Catonis;* Caesar, who was furious because Cato had thus deprived him of the chance to demonstrate his calculating *clementia*, answered with two books of virulent *Anticatones.* However, at the same time he let Cicero know that each time he re-read his *Laus Catonis* he himself felt *copiosior* (Cic., *Ad Att.* 13.46.1). We had heard that one before, but Cicero again felt gratified.

Caesar had bluntly told his soldiers: "You must believe me; I know the truth." From now on, the Roman state would depend upon "Caesars" who knew the truth. Caesar's own view of the glorious Roman *res publica* appears from the cynical statement, again recorded by Suetonius: *nihil esse rem publicam, appellationem modo sine corpore ac specie* (*Caes.* 77). From this view it is but one step to the conclusion *L'état, c'est moi.*

A comparison of the last census before and the first census after the Civil War shows that the male population of Rome had dwindled down by more than half (320,000–150,000). Were all these men sacrificed to one man's ambition? Caesar himself would have denied it vigorously. In the few years that were left to him he used his genius and his dictatorial power to enter upon a gigantic program reorganizing the political, economic,

and social structure of the community. Thus, in a breathtaking historical paradox, it was he who laid the foundation for a Roman *res publica* that would survive its near-death for another number of centuries. In the eyes of many observers, ancient and modern, it earned him the fame of being the greatest of all Roman statesmen. Mommsen's judgment is typical of this view. At the end of the third volume of his great *Römische Geschichte* he states: "So wirkte und schaffte er wie nie ein sterblicher vor und nach ihm, und als Wirkender und Schaffender lebt er noch nach Jahrtausenden im Gedächtnis der Nationen, der erste und doch auch der letzte Imperator Caesar."[13] Mommsen stopped just before the Ides of March, refusing to describe what he considered an abominable crime committed in political blindness.

Here, I will nevertheless end with what happened in the last month of Caesar's life, when he took a step that, he must have realized, brought mortal danger for himself. What was Caesar's attitude to death in general? Plutarch (*Caes.* 57) tells us that once, when a friend advised him to take a bodyguard, he answered that he preferred dying once to the constant presence of death implied by a bodyguard. At another occasion, during a dinner-party when the discussion was about the best kind of death, he answered without hesitation "sudden death." His own death would be both sudden and cruel in the extreme.

His fatal step occurred at the festival of the Lupercalia (15 February 44), where he appeared in the attire of an old Roman king, though at the same time he ostentatiously refused to accept the Hellenistic royal diadem from Mark Antony. Ever since L. Brutus in 510 B.C. had expelled the last Roman king and established the republic, the title *rex* had been the supreme political taboo. Brutus' alleged descendant and namesake M. Brutus, so dear to Caesar even after he fought against him in the Civil War (Plut., *Caes.* 46), took the lead in a conspiracy of twenty-three members of the senate. A month later the tyrannicide took place. How it happened is transmitted in more or less varying versions.[14] All twenty-three conspirators struck him with their daggers. When he sank down he muffled his head in his robe and, as Suetonius tells us, "he drew down its lap to his feet with his left hand in order to fall more decently, with the lower part of his body also covered"—one would almost say in an ultimate concern for feminine-like decency.

[13] Theodor Mommsen, *Römische Geschichte*, vol. 3 (Berlin, 1882), 569.

[14] Suet., *Caes.* 82; Plut., *Caes.* 66 and *Brut.* 17; Appian, *BC* 2.16; Cassius Dio, *Hist. Rom.* 44.19.

Most of our sources agree that the turning point in his fierce resistance was his confrontation with Brutus. Only Suetonius and Cassius Dio mention, both with reservations about its truth, that at this moment he said in Greek *καὶ σὺ τέκνον*. The term *τέκνον* could only refer to Caesar's belief that Servilia's son, then about forty years old, was in fact their common child.

Is there any probability in this intriguing information? As we have seen in the beginning of this paper, Plutarch's *Life of Brutus* (5) is the only passage which says explicitly "that Caesar—and of course Servilia herself—had some grounds for believing that Brutus, who was born at about the time when their passion was in full blaze, was his own son." In this case it surely had to remain a top secret, unknown to her husband and even to Brutus junior himself. It would make Caesar's special regard for Brutus even more understandable. But why would Plutarch not even mention the *καὶ σὺ τέκνον* in his two descriptions of the murder, one occurring in the very *Life of Brutus*? On the other hand, the fact that Caesar is said to have spoken in Greek rather reinforces its probability. Not only was Caesar's Greek fluent, but the use of it was normal among cultured Romans in intimate and emotional situations. Plutarch, for example, reports that the conspirator Casca cried for help to his brother in Greek, too (*Brut.* 17).

I conclude that we can not exclude the possibility that the admittedly less warranted tradition contains the truth, a truth that it surely was in the interests both of the republicans and of the Caesarians to ignore. Was Caesar murdered by his own son? Was the tyrannicide in fact a patricide? It would be a final paradox almost too horrible for words.

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CHAPTER 6

Shifting Charge and Shifty Argument in Cicero's Speech for Sestius

by Christopher Craig

As tribune of the plebs in 57, P. Sestius apparently collected bands of men and resorted to intimidation and violence in his effort to aid in Cicero's recall from exile. So, on February 10 of 56, he was indicted for seditious violence, or *vis* (*Ad Quint. fr.* 2.3.5).[1] The prosecutors were nonentities, and Clodius was the moving force (*Schol. Bob.*, 125 Stangl). The *patroni* were Hortensius, Crassus, Licinius Calvus, and Cicero (*Sest.* 3.14; *Ad Quint. fr.* 2.4.1; *Schol. Bob.*, 125). One could think that the defense faced no great rhetorical challenge; the prosecutors made such a hash of the case that Vatinius, a principal witness for the prosecution, publicly speculated that they were colluding with the defense (*Vat.* 3 and 41).

On March 11, Sestius was unanimously acquitted (*Ad Quint. fr.* 2.4.1). Cicero's preserved speech *Pro Sestio*, the final speech for those of the defense, is noted for many passages, especially the treatment of *optimates* and *populares* (96–143), including the catch phrase *cum dignitate otium* (98) that will recur in slightly different order at the beginning of the *De oratore*.[2]

[1] See E.S. Gruen, *Roman Politics and the Criminal Courts* (Cambridge, 1974), 300–304 for a concise and persuasive treatment of the political context with full collection of ancient sources. Of the works that he cites, L.G. Pocock, ed., *A Commentary on Cicero In Vatinium* (1926; reprint, Amsterdam: Hakkert, 1967) is especially helpful.

[2] Most of the bibliography on the speech focuses on sections 96–143 and on the meaning of *cum dignitate otium.* See especially A. Weische, "Philosophie grecque et politique romaine dans la partie finale du 'Pro Sestio'," *Bulletin de l'Association Guillaume Budé* 29 (1970), 483–88, which includes literature. Of the works that he cites, see especially C. Wirszubski, "Cicero's *Cum Dignitate Otium:* A Reconsideration," *Journal of Roman Studies* 44 (1954), 1–13; M. Fuhrmann, "Cum dignitate otium: politisches Program und Staatstheorie bei Cicero," *Gymnasium* 67 (1960), 481–500; and the summary of other views by J.M. André, *L'Otium dans la vie morale et intellectuelle romaine, des origines à l'époque augustéenne* (Paris,

But with few exceptions, most notably George Kennedy and James May, scholars have not been greatly concerned with Cicero's legal or rhetorical strategy in the speech.[3] This is understandable, since the orator claims that the previous speakers have covered the charges and that he will be more global, answering the prosecution's charges within a *confusa atque universa defensione* (5).

Rather than being a rigorous legal defense of a criminal charge, the speech is seen, in May's concise summary, as the orator's opportunity "to express his gratitude to Sestius for aiding his recall, to castigate his enemies once again, to present an *apologia* for his voluntary withdrawal into exile, and to formulate his own political doctrine of the union of all good men for the betterment of the Republic."[4] D.R. Shackleton Bailey has observed that this is "Cicero at his most discursive,"[5] and Kennedy, while he appreciates the fine moments in the speech, offers this final reflection:

> *Pro Sestio* is not much concerned with its ostensible subject, Sestius; it does not muster its arguments and techniques for a single practical and immediate purpose. Although Cicero's overall objective is to persuade, considerable portions of the speech can easily be viewed

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1966), 295–304. To these add J.P.V.D. Baldson, "*Auctoritas, Dignitas, Otium*," *Classical Quarterly* 10 (1960), 43–50; W.K. Lacey, "Cicero, *Pro Sestio* 96–143," *Classical Quarterly* 12 (1962), 67–71; K. Adomeit, "*Rechts* und *links* bei Cicero," in *De iustitia et iure: Festgabe für Ulrich von Lübtow zum 80. Geburtstag*, eds. M. Harder and G. Thilmann (Berlin, 1980), 81–91; U. von Lübtow, "Ciceros Rede für Publius Sestius," in *Sodalitas: scritti in onore di Antonio Guarino* (Naples, 1984–85), vol. 1, 177–201; and J. Christes, "Cum dignitate otium (Cic. *Sest.* 98)—eine Nachbereitung," *Gymnasium* 95 (1988), 303–15.

[3] George Kennedy, *The Art of Rhetoric in the Roman World* (Princeton, 1972), 194–97, and J.M. May, *Trials of Character* (Chapel Hill, 1988), 90–105. The most important and most recent exception is A. Riggsby, *Crime and Community in Ciceronian Rome* (Austin, 1999), 79–119, esp. 89–97. Riggsby's dissertation, an earlier version of this careful and thorough analysis, has informed my view of the question at issue; A. Riggsby, "Criminal Defense and the Conceptualization of Crime in Cicero's Orations" (Ph.D. diss., University of California at Berkeley, 1993). In my analysis, I differ from Riggsby in my understanding of the audience's rhetorical expectations and, thus, of the rhetorical challenge. Other notable exceptions are Fuhrmann, "Cum dignitate otium," 493–97, and É. Évrard, "Le *Pro Sestio* de Cicéron: un leurre," in *Filologia e forme letterarie: studi offerti a Francesco della Corta*, vol. 2 (Urbino, 1987), 223–34. See also L. Pape, "Du *Pro Murena* au *Pro Sestio*—un Cicéron aveugle?," in *Au miroir de la culture antique: mélanges offerts au président Renée Marache* (Rennes, 1992), 379–84. Elaine Fantham, *Comparative Studies in Republican Latin Imagery* (Toronto, 1972), 125–36, examines the rhetorical uses of the speech's remarkably abundant metaphors and similes.

[4] "The Image of the Ship of State in Cicero's *Pro Sestio*," *Maia*, n.s., 3 (1980), 264.

[5] Cicero, *Back from Exile: Six Speeches upon his Return*, tr. D.R. Shackleton Bailey (Atlanta, 1991), 137.

> as narrative, sometimes even as digressive, in other words, as expressive of Cicero's experience, personality, and thought. He doubtless believed that there was a chance of success for his ideal, but expression was personally important to him, for he had come in his own mind to play a well-defined role in the drama of events, and he was an orator; he could not live without verbalizing.[6]

May's summary and Kennedy's judgment have nicely stated what is most important about the speech.

There is still a bit of critical housekeeping left to do, however. It will be worthwhile to revisit the speech as a piece of *judicial* oratory and to examine one of the rhetorical difficulties that Cicero must overcome in treating the *legal* issues of the case. If we assume for a moment that in this speech, as in most Ciceronian speeches, the case was not nearly so easy to plead as Cicero makes it appear, that there really *was* a rhetorical challenge, we may come to a more satisfying understanding of his persuasive achievement. So, I want to hypothesize that the legal battle had not already been lost and won when Cicero arose for his general summary and that Cicero's treatment of Sestius' tribunate, when the alleged crimes occurred, is a serious attempt to refute the charges.

At first sight, this may seem a strange argument. In a speech 147 sections long, Sestius' tribunate is treated in only twenty-six sections (71–96). Of these twenty-six sections, the first thirteen (71–83) relate to the plans to recall Cicero, the violent opposition of Clodius, and the near martyrdom of the unarmed Sestius. Then a brief mention of the prosecutor's charge (*Homines, inquit, emisti, coegisti, parasti*) at the beginning of section 84 leads to two sections (84–85) devoted to denying that Sestius gathered armed men with any of the enormously evil motives that had stirred the Clodians. Only then, just when we are ready for a full discussion of what Sestius actually did or did not do, when we are ready, in other words, for a specific refutation of the prosecution's charges, Cicero launches into a stirring praise and legally rigorous defense of a different person entirely. It is Milo who is roundly extolled in sections 86–92, while the expected treatment of Sestius' specific act disappears completely, never to return.

At first blush, this seems a supreme example of what Shackleton Bailey calls Cicero's "discursiveness," perhaps the extended observations of one who could not live, as Kennedy says, without verbalizing. It is also, of

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[6] *The Art of Rhetoric*, 197.

course, a friendly brief for Milo, whom Clodius was currently attempting to prosecute for *vis* in a *iudicium publicum.*[7] But those observations aside, it is a pointed rhetorical strategy addressing the legal issue of the case against Sestius.

That legal issue is, of course, whether or not Sestius committed *vis.* But the very definition of *vis* was being stretched in the years 57 and 56. The work of Andrew Lintott and of Andrew Riggsby allows us to extrapolate a clear picture of the evolving concept of *vis* during this period.[8] The *lex Plautia de vi* of about 70 incorporated the terms of the earlier law and widened its scope. Only two of its provisions are directly attested: It could be used to bring charges against those who occupy (high) places and carry weapons with intent to commit murder (Asconius, *Mil.* 55, ed. Clark). More broadly, the *lex Plautia* would accommodate prosecutions for acts of violence that were *contra rem publicam.*

To understand what that meant in practice, we must turn to the actual cases tried under this law (see Appendix). We have clearly attested eleven *vis* indictments before Sestius' tribunate in 57. One of these refers to indictments of several Catilinarians at once. We also have attested one threat of prosecution for *vis* and one case, that of Cicero's consular colleague C. Antonius, whose conviction in 59 just may have been for *vis* rather than *maiestas.* Of these thirteen cases, ten were directly concerned with the Catilinarian conspiracy, a situation in which a rebel army within Italy opposed the Roman state. Of two others, the trials of Caesernius and Camurtius, we know nothing except that the defendants were convicted. Only one case of which we know the details, that of Vettius in 59, is not linked to the Catilinarian conspiracy. Here, one specific, black-letter charge was probably that of having carried a weapon with homicidal intent, which Vettius had publicly admitted in telling of an ostensible conspiracy to murder Pompey.

In short, when the events of 57 and 56 were unfolding, the history of *vis* prosecutions, in so far as we can reconstruct it, had been largely confined to the Catilinarian conspiracy, an event that saw a rebel army take the field against Roman forces. The only other charge that seemed to move a Roman to see an indictment for *vis* was the charge that one possessed a weapon with intent to commit murder. And this charge was pursued in

[7] For sources, see M.C. Alexander, *Trials in the Late Roman Republic 149 BC to 50 BC* (Toronto, 1990), 129 (number 266).

[8] A.W. Lintott, *Violence in Republican Rome* (Oxford, 1968), 107–24, 217–20; Riggsby, *Crime and Community*, 79–119.

the *vis* court, rather than in the more normal murder court, only under bizarre and idiosyncratic circumstances. In general, these cases fall under the conjectural *status*, or question of fact (*Inv.* 1.10–11; 2.16–51; *Rhet. Her.* 1.18; 2.3–12); if one acted in support of the Catilinarian conspiracy, then one's action was patently considered violence *contra rem publicam.* So, for example, Cicero's defense of the alleged Catilinarian P. Sulla for *vis* in 62 is firmly set in the question of fact.[9]

This exclusive focus on the question of fact would change radically early in 57. After Clodius' bloodletting in the forum in January of that year, it was Milo who had the inspiration to use the standing court on *vis* to attack his political opponent. This attempted prosecution was blocked by the consul, Metellus Nepos, the praetor, Clodius' older brother Appius, and a tribune.[10] Their action effectively seems to have stopped activity in the criminal courts for most of the year. Again, in November of 57, when Clodius' *opera* tore down Cicero's home site and later attacked Milo's house, Milo sought an indictment for *vis.*[11] But after much maneuvering, Clodius was elected curule aedile, thus gaining immunity from prosecution. He then turned the tables and prosecuted Milo for *vis* in a *iudicium populi.*[12] The riot that broke out during that proceeding on February 7 of the year 56, immortalized in Cicero's *Ad Quintum fratrem* 2.3, led to senatorial censure. The trial of Milo apparently never ran to completion. It is during the interstices of that trial of Milo that Sestius was charged, tried, and acquitted.

In this environment, *vis* was being expanded from a simple question of fact to cover intramural partisan political violence, thus raising the definitional issue (*Inv.* 1.11; 2.52–56): What is violence *contra rem publicam*? The uncertainty of definition of the charge is reflected in the muddled *status causae.* Cicero never admits that Sestius has committed violence of any kind. To this extent, he seems to function in the expected arena of the question of fact. Cicero's grudging and passing admissions that Sestius has organized armed bands, especially at section 84, give the impression that this was done purely for self-defense and so implicitly seem to shift to the *status* of quality (justification, *constitutio iuridicalis assumptiva; Inv.* 2.71–109), or perhaps of definition, that Cicero will later use in sections 7–11 of

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[9] For an interesting discussion of how strong these facts were, see D.H. Berry, ed., *Cicero: Pro P. Sulla Oratio* (Cambridge, 1996), 33–39.

[10] For the sources, see Alexander, *Trials in the Late Roman Republic*, 128 (number 261).

[11] Ibid. (number 262).

[12] Ibid., 129 (number 266).

the speech for Milo.[13] Finally, without ever admitting the fact that Sestius has raised armed bands that have engaged in violence, Cicero explicitly tries to justify Sestius' doing just that, plainly invoking the arguments of the *status* of quality (*Inv.* 2.71–86), but without ever having admitted the act that he is justifying.

This stands in contrast to the *vis* trial of Milo for killing Clodius four years later, in which Cicero will take pains to deny the act, then argue ostensibly *extra causam* (*Mil.* 72–91) that, even if Milo had intentionally killed Clodius, he should still be acquitted. In that trial, of course, the senate had decreed that Clodius' death and the events that followed were *contra rem publicam* (Asconius, *Mil.* 44). Here there is no such clarity. In this time of attempted broadening of the scope of *vis* to cover partisan intramural violence, the second criterion for *vis*, that it must be violence that is demonstrably *contra rem publicam*, is the heart of the isssue.[14] So, the *status* of quality, justifying an act that the defendant admits having committed, is not simply an appeal to the jurors to put their sense of right above the letter of the law; it is an argument directed at the very conception of the definition of the charge. "Did Sestius commit *vis?*" is thus a question with an odd position in terms of *stasis* theory. It is a question of fact left unaddressed, much less resolved, joined to a question of definition that can properly be addressed by recourse to the arguments of the question of quality.

The practical primacy of the *status* of quality was observed already by the Bobbio Scholiast (125):

> Nevertheless, after Cicero returned from exile, P. Clodius began to accuse Sestius [MSS Sextium] of seditious violence, with P. Albinovanus put forth as the leader of the accusation and with P. Vatinius giving testimony, in order that he might give this most especially for a charge, that <Sestius> overreached the proper civilian method and did not argue his proposal with fairness, but obtained it with arms. By Cicero there will be opposed to this a defense of this sort, which through a <*status* of> quality of a double type . . . [about thirty characters are lost]. For the latter will be a retort of the accu-

[13] For the different types of *status* in *Pro Milone*, see the analysis of Albert C. Clark, ed., *M. Tulli Ciceronis pro T. Annio Milone ad iudices oratio* (1895; reprint, Amsterdam: Hakkert, 1967), xlix–lvii. For the self-defense argument as one of quality rather than definition, cf. Quintilian, *Inst.* 7.4.8. For the convergence of this form of the *status* of quality with the *status* of definition, cf. Cicero, *Inv.* 2.53.

[14] See Riggsby, *Crime and Community*, 84, 89–97.

> sation [*relativum* = *relatio criminis* in *Inv.*] that P. Sestius justly and deservedly had guards of armed men, in order that he might fend off the Clodian attacks from that struggle that he had begun to wage; but the former is referred to comparison [*compensatio* = *comparatio* in *Inv.*], that for a cause good and necessary for the republic, even if he had armed men, he ought to be unpunished, since he wanted a citizen who had deserved well concerning the safety of the fatherland to be restored, a goal that had the approval and agreement of all.[15]

According to the Bobbio Scholiast, this is a *status* of quality, of justification, that takes two forms. One is that Sestius' actions in bringing about Cicero's recall were for the good of the republic. *De inventione* (2.72–73) defines this as *comparatio*, the argument that an action is justified if it results in some greater good in the future. Kennedy says, "Sestius' purpose as a tribune was to heal the wounds of the state, and what greater wound was there than the attack on Cicero?"[16] May's interpretation of the speech, showing how Cicero finally equates the restoration of himself with the restoration of the republic, is the fullest exploration of the *comparatio* argument.[17] But the other type of justification, *relatio criminis* (*Inv.* 2.78), has a weight to bear as well. While *comparatio* looks forward, *relatio criminis* looks backward; it is a justification based on prior provocation. The example given in *De inventione* is that of Horatius, the lone survivor of the duel between the Horatii and the Curiatii under the reign of king Tullus Hostilius. Horatius killed his sister for mourning her fiancé, whom he had killed to preserve Rome (cf. Livy 1.26). According to this *status*, Clodius' earlier violent behavior justified Sestius' response.

To the extent that Cicero relies on this argument, and that extent is nontrivial, he has a problem. The Romans themselves were extremely ambivalent about justifying a violent act because the victim had provoked it. So, in the later defense of Milo, Asconius tells us that Cicero declined to use such a *relatio criminis* defense as his principal argument because he did

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[15] *Postquam tamen Cicero ab exsilio rediit, accusare de vi Clodius Sextium coepit inmisso velut principe delationis P. Albinovano et testimonium dicente P. Vatinio, ut hoc praecipue crimini daret, quod supergressus civilem modum rogationem suam non aequitate persuaserit, sed armis optinuerit. Cui opponetur huiusmodi a Cicerone defensio, quae per qualitatem speciei duplicis . . . [lac. 5.5 cm et. 1 lin. vel 30 litt.]. Nam relativum hoc erit, iuste et merito habuisse armatorum praesidia P. Sestium, ut Clodianos impetus ab illa dimicatione quam facere coeperat submoveret; illud vero ad conpensationem refertur, pro bona causa rei P. necessaria, etiamsi armatos habuerit, inpunitum esse debere, cum bene meritum de salute patriae civem restitui vellet omnium favente consensu.*

[16] *The Art of Rhetoric*, 195.

[17] *Trials of Character*, 90–105.

not believe that a miscreant should be punished without trial.[18] Even in the story of Horatius in Livy, Horatius was acquitted *admiratione magis virtutis quam iure causae* (Livy 1.26.12). In fact, among the *loci* of *relatio criminis* in *De inventione* (2.84), we learn that the prosecution's most powerful argument is that the defendant, by punishing the person who has wronged him, has taken the law into his own hands, and so has vitiated the whole judicial process. This point has already received extraordinary emphasis in the list of the prosecutor's *loci* in *relatio criminis* (*Inv.* 2.80–81):

> Then the prosecutor should deny that it is right to listen to the charge which the defendant brings against the other party, which he himself, the very man who brings it, was unwilling to submit to a court of law, and then claim that an act which has not been passed upon by a court should be regarded as not done. After that he should call attention to the shamelessness of those who now accuse before a jury one whom they themselves have condemned without a jury, and are now trying an offense which they have already punished with their own hands. After that he should argue that the judicial process will be disturbed, and that the judges will go beyond their authority if they pass judgment at the same time on the defendant and the person whom the defendant accuses; then he should point out what disastrous results will follow if it is established that men may avenge crimes with crimes and injuries with injuries; and if the prosecutor had been willing to do the same there would have been no need of this trial either; and if everyone should act in the same way, there would be no trials at all.[19]

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[18] *et cum quibusdam placuisset ita defendi crimen, interfici Clodium pro re publica fuisse—quam formam M. Brutus secutus est in ea oratione quam pro Milone composuit et edidit quasi egisset—Ciceroni id non placuit ut quisquis bono publico damnari, idem etiam occidi indemnatus posset.* [And although it had pleased some that the charge be defended in this way, that it had been for the public good that Clodius was killed—the argument that M. Brutus followed in that oration that he composed for Milo and published as if he had delivered it—it was not pleasing to Cicero that anyone who could be convicted for the public good might also be killed without being convicted.] (Asconius, *Mil.* 41, ed. Clark)

[19] Tr. H.M. Hubbell, Loeb Classical Library (Cambridge, 1976). *Deinde negare audire oportere id quod in eum criminis conferatur, de quo is ipse qui conferat iudicium fieri noluerit, et id quod iudicatum non sit pro infecto habere oportere; postea impudentiam demonstrare eorum qui eum nunc apud iudices accusent quem sine iudicibus ipsi condemnarint, et de eo iudicium faciant de quo iam ipsi supplicium sumpserint; postea perturbationem iudici futuram dicemus et iudices longius quam potestatem habeant progressuros, si simul et de reo et de eo quem reus arguat iudicarint; deinde, si hoc constitutum sit, ut peccata homines peccatis et iniurias iniuriis ulciscantur, quantum*

I quote at such length to show how heavily this line of reasoning would weigh with a rhetorically educated jury. Cicero's treatment of Milo in sections 86–92 of our speech precisely addresses this most potent argument of the prosecution:

> Now the main difference between our way of life with all the refinements of civilization and the old savage way is the difference between law and force. If we don't wish to live by one of the two, we must live by the other. If we want force suppressed, the law must prevail, that is to say law courts, on which all law depends. If the law courts are unsatisfactory or nonexistent, then force needs be master. Everybody sees this; Milo both saw and acted. He repelled force in order to make trial of law. He wanted to use the latter, hoping that virtue would triumph over audacity; and he was compelled to use the former to prevent audacity triumphing over virtue. Sestius' position was identical (!)—not as to launching a prosecution, since there was no need for everybody to take a hand in the same operation, but at all events in the necessity of defending his life and raising a bodyguard against physical violence. (*Sest.* 92)[20]

Milo, by trying to prosecute Clodius in the courts, had armed himself perfectly against the strongest argument that a prosecutor can bring to bear when a defendant pleads prior provocation. Milo had not wanted to take the law into his own hands, but Clodius' successful blocking of the courts left him no choice.

Milo's case was, in fact, so strong that the prosecutors had had to insist that it differed fundamentally from that of Sestius and had even praised Milo in contrast to Sestius (*Sest.* 86, 87; *Vat.* 40). Their strategy is reasonable. After all, Sestius, not Milo, was on trial here. And Sestius never made any redeeming attempt to use the law courts before moving to more vio-

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incommodorum consequatur; ac idem facere ipse qui nunc accusat voluisset, ne hoc quidem quicquam opus fuisse iudicio, si vero ceteri quoque idem faciant, omnino iudicium nullum futurum.

[20] Tr. Shackleton Bailey, in *Back from Exile. Atque inter hanc vitam perpolitam humanitate et illam immanem nihil tam interest quam ius atque vis. Horum utro uti nolumus, altero est utendum. Vim volumus exstingui, ius valeat necesse est, id est iudicia, quibus omne ius continetur; iudicia displicent aut nulla sunt, vis dominetur necesse est. Hoc vident omnes: Milo et vidit et fecit, qui ut ius experiretur, vim depelleret. Altero uti voluit, ut virtus audaciam vinceret; altero usus necessario est, ne virtus ab audacia vinceretur. Eademque ratio fuit Sesti, si minus in accusando—neque enim per omnis fuit idem fieri necesse (!)—at certe in necessitate defendendae salutis suae praesidioque contra vim et manum comparando.*

lent means. All that Cicero can do on this awkward point is to extol Milo, then to insist that Sestius' case is identical. In typical Ciceronian fashion, his compulsive verbalizing, to use Kennedy's characterization, simply glosses over the argument that Sestius' case does differ from that of Milo in the absolutely essential particular that Sestius *never* tried to use the courts as an alternative to violence.

In summary, *Pro Sestio* is certainly a political tract that is justly celebrated for the discussion of *optimates* and *cum dignitate otium.* It is also a masterpiece of Cicero's own persuasive self-depiction, as May has thoroughly demonstrated. And it is properly judged, as Kennedy has judged it, as at once a political oration of mixed virtues and a clear window on Cicero's own personality in his trying *post reditum* period. But the persuasive performance is harder than Cicero makes it appear. The very nonchalance, the discursiveness of his speech conceals and implements an effective rhetorical strategy for dealing with the principal legal issue of the case in a way that can satisfy the expectations, and, in any case, allay the ambivalence, of his rhetorically educated jurors.

Appendix

Defendants in *vis* trials prior to 57. Numbers in parentheses are keyed to Alexander, *Trials in the Late Roman Republic*, who is slightly more comprehensive than Lintott, *Violence in Republican Rome*, 217–20.

i. (223) Catiline, after October 21, 63, incomplete.
ii. (226) followers of Catiline, for their role in the conspiracy, 62, convicted.
iii. (227) threat of prosecution against Caesar, for his role in the Catilinarian conspiracy, spring of 62, aborted.
iv. (228) C. Cornelius (an *eques*), possibly charged with *vis*, 62, convicted?
v. (229) P. Autronius Paetus (*cos. des.* 65), for his role in the Catilinarian conspiracy and for the attempted murder of Cicero, 62, convicted.
vi. (230) P. Cornelius Sulla (a senator), for his role in the Catilinarian conspiracy, 62, convicted.
vii. (231) M. Porcius Laeca (a senator), for his role in the Catilinarian conspiracy, 62, convicted.
viii. (232) L. Vargunteius (an *eques*?), for his role in the Catilinarian conspiracy, 62, convicted?
ix. (234) P. Cornelius Sulla (*cos. des.* 65), for his role in the Catilinarian

conspiracies and attempted massacre at consular elections of 63 and 62 and for creating a disturbance in Further Spain, 62, acquitted. [Cicero's defense speech *Pro Sulla* survives.]

x. (381) C. (?) Caesernius, specifics of charge unknown, 62 (?), convicted. [The sole mention of this case is at Cicero, *Cael.* 71.]

xi. (382) M. Camurtius, specifics of charge unknown, 62 (?), convicted. [The sole mention of this case is at Cicero, *Cael.* 71.]

xii. (241) C. Antonius (*cos.* 63), charged either *de maiestate* or under *lex Plautia de vi*, either for his role in the Catilinarian conspiracy or for incompetence as governor of Macedonia in 62–60, 59, convicted.

xiii. (242) L. Vettius (an *eques*), for his role in plot against Pompey, 59, defendant died in prison before trial.

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CHAPTER 7

Cicero's Pro Milone: *An Ideal Speech of an Ideal Orator*[1]

by James M. May

The decade of the 50s B.C. was a particularly difficult—perhaps the most difficult—period in Cicero's life. First, after witnessing the glory of his consulship and the Nones of December crumble before his eyes, he was forced into a psychologically devastating exile, during which time he seriously contemplated suicide.[2] Then, after a brief resurgence of popularity following his recall, his hopes of driving a wedge between the Triumvirs were dashed; they brought him quickly to heel, forcing him to sing, so to speak, a "palinode," and to support their cause further through his oratorical powers by speaking on behalf of some of his most despised personal enemies, including Vatinius and Gabinius. Such humiliation ultimately imposed a kind of forced retirement upon him, which, despite the suffering it entailed for Cicero himself, blessed posterity with its fruits, which include the treatises *De republica*, *De legibus*, and most importanly for our purposes, *De oratore.*

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[1] More than twenty years ago, I published my first article, which concerned itself with an analysis of Cicero's use of the three modes of persuasion, *logos*, *ethos*, and *pathos*, in Cicero's *Pro Milone* ("Cicero's *Pro Milone:* A Progression of Intensity from Logos to Ethos to Pathos," *Classical Journal* 74 [1979], 240–46). There I argued that Cicero had constructed his published speech for Milo in such a way that its emotional tone increased in a progression of intensity from *logos* to *ethos* to *pathos* as it moved from the argumentation, through the long digression or *pars extra causam* into the peroration.George Kennedy provided the nucleus for that article, as well as for my dissertation that preceded it, in notes and discussions that we shared as I prepared to write my doctoral thesis. I thought it would be especially fitting for me, in the present paper written for inclusion in this volume honoring him, to revisit the topic and to explore *ethos* and *pathos* in the *Pro Milone* from a slightly different perspective.

[2] Cf. *Ad Att.* 3.3; 3.4; 3.7.2; 3.9.1; 3.19.1; *Ad Quint. Fr.* 1.3.

Some thirty years after the publication of his youthful *De inventione*, Cicero, at the urging of his brother, finally found the time and the opportunity to compose a more polished and mature exposition.[3] *De oratore* is unique among ancient rhetorical writings in that it abandons entirely the format, the language—that is, the jargon—of typical rhetorical handbooks. In fact, Cicero has his characters openly criticize the handbooks and their approach repeatedly. Still, most of the rhetorical precepts (at least in abbreviated form) are there, woven skillfully into the dialogue and discussed in a vocabulary that avoids traditional technical terminology. In the course of the discussion, a portrait of the ideal orator emerges: He is a man in possession of both eloquence and wisdom, steeped not only in the knowledge of rhetoric, but more importantly one who has studied philosophy, law, human character and emotion, indeed, all of the noble arts, in sum, the product of a cultural education that has prepared him to speak on any topic and assume any position of leadership in the state. In many ways, of course, this portrait is made in Cicero's own image and likeness, and it, along with the work as a whole, stands as a monument to his rhetorical and oratorical genius.

One of the most striking characteristics of *De oratore* is its return to the so-called Aristotelian tradition in rhetoric, as noted by Friedrich Solmsen[4] and most recently explicated in elegant detail in the monumental commentary on *De oratore* by A.D. Leeman, H. Pinkster, and their collaborators.[5] This tradition insists, among other things, on the importance of the non-rational modes of proof, namely *ethos* and *pathos*, treating them as a part of invention, and setting them on a par with rational argumentation. The significance of these non-rational means of persuasion in the Ciceronian system of rhetoric presented in *De oratore* is difficult to overestimate. It is, I believe, not by chance that Cicero locates the account of *ethos* and *pathos* precisely at the center of the work, literally and figuratively at the heart of the matter.[6]

In 52 B.C., only a couple of years following the completion of *De oratore*, Cicero returned to active pleading in order to defend the tribune Milo

[3] Cf. *De or.* 1.5.

[4] "The Aristotelian Tradition in Ancient Rhetoric," *American Journal of Philology* 62 (1941), 35–50, 169–90.

[5] A.D. Leeman, H. Pinkster, et al., *M. Tullius Cicero De oratore libri III. Kommentar* (Heidelberg, 1981 ff.: I: 1981; II, with Hein L.W. Nelson: 1985; III, with Edwin Rabbie: 1989; IV, with Jakob Wisse: 1996).

[6] Book 2, the middle book of the work, is 367 sections long; Cicero's primary treatment of *ethos* and *pathos* is located in sections 178–216.

who had been charged with the murder of P. Clodius Pulcher, the instigator of Cicero's exile. The story is a well-known one: In January 52 B.C., the companies of Clodius and Milo met, probably by accident, on the Appian Way. Fighting broke out, and, in the scuffle, Clodius was killed. To control the further unrest that ensued, Pompey was appointed sole consul and enforced strict measures to govern the subsequent proceedings. Cicero, sole counsel for the defense, delivered his oration on Milo's behalf in a packed forum under the eye of Pompey and his armed guard. Visibly shaken by the circumstances, he completed his speech, but not with his accustomed effectiveness.[7] Milo was convicted and went into exile. We know that the speech that Cicero subsequently published differed (perhaps substantially) from the speech that Cicero actually delivered.[8] Yet the oration as transmitted to us, by all accounts, stands as a rhetorical masterpiece. The legendary quip reportedly made by Milo that, had Cicero delivered that version of the speech, he would never have been able to experience the fine seafood of Marseilles,[9] indicates a near-immediate appreciation of the published speech's artistry, as does the fact that Quintilian, writing several generations later, uses it so often as an illustrative teaching text.[10] The thesis proposed in this paper is a straightforward one: Cicero, in his published speech on behalf of Milo, presented a practical and pragmatic manifestation, an application, as it were, of his theoretical exposition of rhetorical teaching as set forth in *De oratore.*

Illustration of this point might be made in any number of ways. For example, an examination of the structure of the speech reveals that it is practically textbook perfect: There is an introduction or exordium (1–6), a preliminary refutation (7–23), a clear declaration of the chief defensive stance that Cicero will argue (namely, self-defense), a lucid, brief, and

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[7] Cf. Asconius, *Mil.* 42 (ed. Clark): *Cicero cum inciperet dicere, exceptus est clamatione Clodianorum, qui se continere ne metu quidem circumstantium militum potuerunt. Itaque non ea qua solitus erat constantia dixit.*

[8] Ibid.: *Manet autem illa quoque excepta eius oratio: scripsit vero hanc quam legimus ita perfecte ut iure prima haberi possit.* For details on the written versus the spoken version of the speech, see J. Humbert, *Les plaidoyers écrits et les plaidoiries réelles de Cicéron* (Paris, 1925), 262–63; J.N. Settle, "The Trial of Milo and the other *Pro Milone*," *Transactions of the American Philological Association* 94 (1963), 268–80; A. Stone, "*Pro Milone:* Cicero's Second Thoughts," *Antichthon* 14 (1980), 88–111; M. Clark and J. Ruebel, "Philosophy and Rhetoric in Cicero's *Pro Milone*," *Rheinisches Museum* 128 (1985), 57–72; A.M. Riggsby, *Crime and Community in Ciceronian Rome* (Austin, 1999), 110–12.

[9] Dio Cassius, *Hist. Rom.* 40.54.3.

[10] Cf., e.g., Quint., *Inst.* 3.6.12, 93; 4.1.20, 31; 4.5.15; 5.14.22; 6.5.10; 7.2.43; 9.2.38; 10.5.20; 11.1.34, 40; 11.3.47, 115, 167.

persuasive narration (24–30), a short proposition (30–31), followed by the formal proof of the case (32–71), which employs arguments from probability, motive, character, and the circumstances of time, place, and available means. The proof is followed by a digression largely based on character, which is in turn followed by an emotionally powerful peroration. We might explore in depth Cicero's choice and use of *status*, or his employment of general questions effectively in the speech. All of these topics, some to a greater, others to a lesser degree, are reflective of Cicero's theory as explicated in *De oratore*.[11] Yet most of this was part and parcel of every rhetorical handbook, and, in fact, it is precisely in reaction to such typical rhetorical handbook fare that Cicero composed *De oratore*. Far more illustrative of *De oratore*'s rhetorical influence on the *Pro Milone* (as well as the *Pro Milone*'s own rhetorical effectiveness) is the way in which Cicero employs within the speech's structure the non-rational modes of proof, *ethos* and *pathos*, the treatment of which lies at the heart of *De oratore* and contributes so much to the originality of that work.

Consider this passage from Book 2 (310–12):

> Also, as I have often said already, we bring people over to our point of view in three ways, either by instructing them or by winning their goodwill or by stirring their emotions. Well, one of these methods we should openly display, and we must appear to aim at nothing but giving instruction, while the other two must, just like blood in the body, flow throughout the whole of the speech. For it is essential that not only the prologues but also the other parts of a speech, about which I shall presently say a few words, should have the power to seep into the minds of the audience. As regards those two elements of a speech (which, though they do not provide instruction by argument, still accomplish a great deal by persuading and moving [i.e., *ethos* and *pathos*]), it is true that both the beginning and the end of a speech are especially appropriate places for them; nevertheless, it is often useful to digress from the proposition you are arguing[12] in order to stir the emotions. Accordingly, after the case has been set forth in the narration, there is often room for inserting a digression aimed at stirring up emotions. Or this may well be done after our arguments have been established or after those of our opponents have

[11] Cf., e.g., *De or.* 2.307–32 on the parts of speech, 2.99–113 on status theory, 3.104–25 (cf. 2.133–42) on the use of general questions.

[12] *Proposition* is here used in the technical sense of the assertion presented as central to the case (cf. *De or.* 2.80).

been refuted, or in both places, or in all parts of the speech, if there is enough importance and substance to the case. Actually, the cases that can best be amplified and given distinction, being weightiest and fullest, are exactly those that offer the most starting points for digressions of the kind that allow us to employ the commonplaces that drive on or deflect the audience's emotional impulses.[13]

Indeed, Cicero's use of *ethos* and *pathos* in the *Pro Milone* reflects almost perfectly these points. The case itself, pled before a sole consul in the Roman forum, was important and substantial, involving the civic status of a former tribune, praetor, and consular candidate.[14] It was just the type of situation that, according to Cicero, presented the richest opportunities for amplification through the effective use of digression. Cicero's use of digression in the speech (72–91) is, in fact, masterful, and he effectively employs *ethos*, along with a good dose of *pathos*, to create a progression of intensity in argumentation, character, and emotion, from *logos* to *ethos* to *pathos*.[15] Actually, the use of *ethos* (and *pathos* for that matter) is pervasive throughout the oration (in Antonius' phrase "like blood through a body"). Indeed, not only the digression and peroration, but the exordium, narration, and proof itself are marked by passages that rely on *ethos* and *pathos*, giving them, as Antonius remarks, "the power to seep into the minds of the audience." [16]

One might, of course, plausibly argue that nearly the same observations could rightly be made concerning many other masterful orations by

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[13] *et quoniam, quod saepe iam dixi, tribus rebus homines ad nostram sententiam perducimus, aut docendo aut conciliando aut permovendo, una ex tribus his rebus res prae nobis est ferenda, ut nihil aliud nisi docere velle videamur; reliquae duae, sicuti sanguis in corporibus, sic illae in perpetuis orationibus fusae esse debebunt; nam et principia et ceterae partes orationis, de quibus paulo post pauca dicemus, habere hanc vim magno opere debent, ut ad eorum mentes, apud quos agetur, movendas permanare possint. sed his partibus orationis quae, etsi nihil docent argumentando, persuadendo tamen et commovendo perficiunt plurimum, quamquam maxime proprius est locus et in exordiendo et in perorando, digredi tamen ab eo, quod proposueris atque agas, permovendorum animorum causa saepe utile est. itaque vel re narrata et exposita saepe datur ad commovendos animos digrediendi locus, vel argumentis nostris confirmatis vel contrariis refutatis vel utroque loco vel omnibus, si habet eam causa dignitatem atque copiam, recte id fieri potest; eaeque causae sunt ad augendum et ad ornandum gravissimae atque plenissimae, quae plurimos exitus dant ad eius modi digressionem, ut iis locis uti liceat, quibus animorum impetus eorum, qui audiant, aut impellantur aut reflectantur.*

[14] Cf. *De or.* 1.181–83, 2.137, 3.211 for cases involving the civic status (*caput*) of an individual.

[15] See May, "Cicero's *Pro Milone*."

[16] For a detailed account, see James M. May, *Trials of Character: The Eloquence of Ciceronian Ethos* (Chapel Hill, 1988), 129–40.

Cicero, in which the stakes and the notoriety of the trial were equally high (e.g., *Pro Cluentio, Pro Murena*). This is certainly true enough. But there is, I believe, one more piece of evidence that argues strongly for the case that the *Pro Milone* as published is actually an intentional oratorical example of the theoretical rhetorical system outlined in *De oratore.* If we return for a moment to the central passage of Book 2 mentioned above, wherein the interlocutor Antonius describes the effectiveness of *ethos* and *pathos*, we see that his remarks in this regard are vividly illustrated and underscored through his reference to and description of two of his own actual cases, namely his defense of Manius Aquillius, mentioned very briefly in sections 194–96, and the more detailed account of his defense of Gaius Norbanus in sections 197–203. I would like to suggest that Cicero, when composing his published speech for Milo, recalled Antonius' skillful use of *ethos* and *pathos* in the Norbanus case and his own account of this in *De oratore*, and drew inspiration from it for his own oration.[17]

Let us briefly consider the circumstances of the Norbanus case and the details of Antonius' defense.[18] In 105 B.C., eighty thousand Roman soldiers died in the infamous battle against the Germans at Arausio in Gaul. The slaughter was in no small part a result of the unwillingness of Q. Servilius Caepio, consul in 106 B.C., to lend his support and cooperation to the consul Mallius Maximus in resisting the Germans. Two years later, the tribunes Norbanus and Saturninus charged Caepio with high treason. Violence dominated the ensuing trial, and, during one scuffle, the *princeps senatus* Aemilius Scaurus was struck by stone. Sulpicius in turn, in 95 B.C., charged Norbanus with treason for this act. Antonius, pressed by the traditional bond between proconsul and quaestor (Norbanus had served in this capacity under Antonius in Cilicia in 101 B.C.), took up the defense in the face of overwhelming odds: The facts were telling against Norbanus; he was considered a seditious citizen; public opinion seemed greatly

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[17] More than a half-century ago, Friedrich Solmsen remarked on the inspiration that Cicero must have drawn from Antonius' tactics in the Norbanus case; "Cicero's First Speeches: A Rhetorical Analysis," *Transactions of the American Philological Association* 69 (1938), 542–56. My approach here takes its cue from his observation: "Having every merit of a congenial approach, it [i.e., Cicero's analysis of Antonius' speech for Norbanus as recounted in *De oratore*] constitutes a model also for any modern attempt at analyzing Cicero's own great emotional orations. In fact, it comes to our aid at precisely the point where the *De Inventione* ceases to be useful" (553).

[18] I follow closely Jakob Wisse, *Ethos and Pathos from Aristotle to Cicero* (Amsterdam, 1989), 269–82, in the following account and for the reconstruction of the speech (see bibliography there). Cf. also Leeman-Pinkster, vol. 3, 130–32.

out of sympathy with him; and Sulpicius had presented an emotionally powerful case for the prosecution.

Although the individual circumstances are markedly different from Milo's case, Cicero's defense faced several of the same challenges. Recall that Milo was considered by many to be indisputably guilty of murder; moreover (according to Asconius, *Mil.* 37.18–23), there was great public sentiment against him *and* against Cicero for taking up his defense. Although Milo had not served as Cicero's quaestor, he had worked tirelessly several years earlier for Cicero's recall from exile; the obligations of *amicitia* in Cicero's eyes were formidable and significant. Furthermore, the prosecution had seriously prejudiced the case by arguing vigorously that both the Senate and Pompey had been convinced, and had already passed judgment on Milo's guilt.

In his speech on behalf of Norbanus, Antonius began his exordium (as Sulpicius reports [*De or.* 2.202]) with slowness and hesitation, working carefully to develop his character in a way to secure a hearing for himself. Cicero likewise begins the *Pro Milone* in a hesitant fashion, expressing his fear and uncomfortableness at the unaccustomed surroundings in the Roman forum, thus winning goodwill for himself while also introducing the other characters involved in the case (cf. esp. *Pro Mil.* 1–5). Antonius then began to "worm his way along," out of his difficult position, almost imperceptibly, by surveying in his argumentation "all types of sedition, the harm they did and their dangers" (2.199), citing precedents, comparing them with the case of Norbanus, further attempting to win the sympathy of the *populus Romanus.* In this part of the speech, he seems also to have interwoven arguments on the definition of *minuta maiestas* (i.e., treason, diminishing the majesty of the Roman people). In fact, he admits (2.107) that he acknowledged the truth of most of the facts that Sulpicius had raised, but denied that Norbanus had, in reality, "diminished the majesty of the Roman people." On the contrary, he argued, violence, at times, seemed justifiable, and in no case had it ever been more justifiable than in this one (2.199). The technical defensive stance of the case thus turned on the definition of treason. We should recall that Cicero uses a line of defense in *Pro Milone* that primarily turns on definition as well, arguing that Clodius' death was not a murder, but the result of self-defense (cf., e.g., *Pro Mil.* 6–11, 15–23, 30–31); Cicero, too, in his preliminary refutation, had cited several Roman precedents of justifiable homicide (*Pro Mil.* 6–11).

At this point, Antonius claims that he changed the entire thrust of his speech, perhaps in the kind of digression mentioned above as suggested

in *De oratore* 2.311–12, as he turned to a reproach of Caepio's flight and a lament over the destruction of his army. This section of the speech, while it certainly must have contained arguments based in character (i.e., *ethos*), relied most heavily on *pathos*, the stirring of emotions. Antonius relates that this portion of the speech "reopened the wounds of those who grieved for their own relatives, and at the same time recalled the hearts of the *equites*, who were jurors in this case, to a fresh hatred for Caepio." "How you filled all of the proceedings with hatred, indignation, and pity," exclaims Sulpicius in his subsequent description of Antonius' tactics (2.203).

The *pars extra causam* of the *Pro Milone* serves many of the same purposes in Cicero's defense. There too, the orator changes the entire thrust of his speech.[19] In fact, he introduces an entirely new line of defense, the qualitative status (*constitutio generalis*), arguing (as Marcus Brutus had apparently strongly recommended[20]) the justice of Clodius' murder on the grounds that he was a criminal and a reprobate. By introducing this supplemental line of defense,[21] Cicero is able to stir up a fresh hatred for Clodius, while gaining further sympathy and goodwill for Milo. The character of Clodius as a criminal, one who has renounced his fellowship not only with his society, but even with the human race, is chronicled in the digression in striking and detailed terms (cf. *Pro Mil.* 72–78, 87–88). This portrait is offset and contrasted by the depiction of Milo as an instrument of the gods' vengeance against Clodius' crimes and as a tyrannicide who stepped forth to do his duty to the state by dispatching Clodius.[22] Although *ethos* is the predominant source of proof here, there are flashes of extraordinarily emotional *pathos* as well (cf., e.g., Cicero's invocation to the hills and groves of Alba and the sanctities that witnessed Clodius' demise; *Pro Mil.* 85).

Antonius then describes his tactics, as he concludes his oration (2.200–201):

> When I sensed that I had gained control of the trial and of my defense, inasmuch as I had secured the sympathy of the people, whose

[19] The *pars extra causam* is believed by many scholars to have have been the major addition to the published version of the speech (cf. Stone, Clark and Ruebel, and Riggsby, above, n. 8). Such an addition, wherein Cicero digresses largely to employ proof based in *ethos* and *pathos*, would make sense, especially if he were intending his published speech to serve as a teaching text reflective of his rhetorical theory as set forth in *De oratore*.

[20] Asconius, *Mil.* 41.9–14 C; Quint., *Inst.* 3.6.93.

[21] See Riggsby, *Crime and Community*, 112–19, for Cicero's possible reasons for not originally including this portion of the speech in the spoken version.

[22] Cf. May, *Trials of Character*, 134–37.

> prerogative I had defended even when it involved sedition, and inasmuch as I had won over the hearts of the jurors entirely to my side, owing partly to the disaster that had befallen the community, partly to the grief and longing for their relatives, and partly to their hatred for Caepio personally—at that point I began to combine this vehement and fierce kind of speech with that other kind, based on gentleness and mildness, which I discussed earlier. I was fighting, I said, on behalf of my comrade (who by ancestral tradition ought to be like a son to me), as well as for practically my entire reputation and fortune. And nothing could be more disgraceful to my good name, no grief could be more bitter for me, than that I—I, who was considered often to have been the salvation even of fellow citizens whom I didn't know at all—than that I should prove unable to come to the aid of my comrade. I asked the jurors to consider my age, my public offices, and my accomplishments, and if they saw me affected by a just and loyal grief, to allow me to offer such aid, especially when they realized that, whenever I had begged for anything in other cases, it had always been on behalf of prosecuted friends, never to get anything for myself.[23]

Thus, in the peroration of his speech, Antonius combined *pathos* and *ethos*, but unlike Cicero in the *Pro Milone*, who carried the high emotional pitch to the very end of his speech, Antonius appears to have reined in the emotions in order to return to a milder kind of speaking, that based in *ethos*, to underscore his own character and his *fides* toward his client.[24]

The epilogue of the *Pro Milone*, in turn, actually fluctuates (almost systematically) in tone between the mild and the vehement, with now *ethos*,

[23] *quod ubi sensi me in possessionem iudicii ac defensionis meae constitisse, quod et populi benevolentiam mihi conciliaram, cuius ius etiam cum seditionis coniunctione defenderam, et iudicum animos totos vel calamitate civitatis vel luctu ac desiderio propinquorum vel odio proprio in Caepionem ad causam nostram converteram, tum admiscere huic generi orationis vehementi atque atroci genus illud alterum, de quo ante disputavi, lenitatis et mansuetudinis coepi: me pro meo sodali, qui mihi in liberum loco more maiorum esse deberet, et pro mea omni fama prope fortunisque decernere, nihil mihi ad existimationem turpius, nihil ad dolorem acerbius accidere posse, quam si is, qui saepe alienissimis a me, sed meis tamen civibus saluti existimarer fuisse, sodali meo auxilium ferre non potuissem. petebam a iudicibus, ut illud aetati meae, ut honoribus, ut rebus gestis, si iusto, si pio dolore me esse adfectum viderent concederent, praesertim si in aliis causis intellexissent omnia me semper pro amicorum periculis, nihil umquam pro me ipso deprecatum.*

[24] See Wisse, *Ethos and Pathos*, 277, 280–82; perhaps, as Wisse suggests (280), the case of Norbanus was too dishonorable for Antonius to have involved himself with it in an overly emotional display.

now *pathos* taking the more prominent role. Cicero separates his own character from that of his client Milo. Milo remains calm, aloof, and unaffected by the possible consequences of the proceedings, thereby confirming and enhancing the portrait that Cicero had presented earlier. Cicero himself, on the other hand, engages in a full *commiseratio* on behalf of his client, pulling out all of the emotional stops, finally ending his speech because of his inconsolable grief (*Pro Mil.* 105). In this connection, of course, we should note that here again Cicero is following one of the doctrines espoused in *De oratore*, that of *ipse ardere*, the necessity of the orator actually to feel the same emotions that he wishes to instill in his audience (*De or.* 2.188–90). In fact, Cicero ends the speech for Milo in much the way in which Antonius had concluded his speech for Aquillius, in high emotion and actual tears (*De or.* 2.195–96). It is, likewise, worth noting that the argument made by Antonius, based on his *fides* toward his former quaestor, is also made by Cicero, albeit in heightened emotional terms, in the final sections of *Pro Milone* (100):

> Now one consolation sustains me—the thought that I have failed you in no service of love, zeal, or duty. It was I who, on your behalf, courted the hatred of the powerful; it was I who often exposed my person and my life to the weapons of your enemies; it was I who, on your behalf, prostrated myself as a suppliant at the feet of many; I have offered my goods, my fortunes, and those of my children, to share alike in your circumstances; in sum, if, on this very day, violence has in any way been contrived against you, if a life and death struggle will occur, I demand it for myself.[25]

There is, of course, no way of knowing whether Cicero's internally consistent account of Antonius' defense corresponds, in fact, to the actual speech that Antonius delivered. (We do know that Antonius' speeches were not published.[26]) Thus, the account in *De oratore* could be entirely Cicero's own composition according to the historical circumstances known to him; but owing to the case's notoriety and Cicero's own knowl-

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[25] *Nunc me una consolatio sustentat, quod tibi, T. Anni, nullum a me amoris, nullum studi, nullum pietatis officium defuit. Ego inimicitias potentium pro te appetivi; ego meum saepe corpus et vitam obieci armis inimicorum tuorum; ego me plurimis pro te supplicem abieci; bona, fortunas meas ac liberorum meorum in communionem tuorum temporum contuli; hoc denique ipso die, si qua vis est parata, si qua dimicatio capitis futura, deposco.*

[26] Cf. *Pro Cluentio* 140: *Hominem ingeniosum, M. Antonium, aiunt solitum esse dicere "idcirco se nullam umquam orationem scripsisse ut, si quid aliquando non opus esset ab se esse dictum, posset negare dixisse."*

edge of the oratory of Antonius and Crassus, it would seem more likely that Cicero had at his disposal some rather accurate information about the speech that he employed in his reconstruction.[27]

In either case, our argument is not directly affected. Cicero's purpose in including such a vivid account of the Norbanus case at this point in *De oratore* is to illustrate, within the treatise itself, the practical application of his theoretical exposition of the non-rational means of argumentation, *ethos* and *pathos*, in oratory. The effect and effectiveness of *ethos* and *pathos* is thus explained by Cicero through the words of the interlocutor Antonius (2.201):

> Thus, in the whole of my defense in this case, I only touched quite briefly and quite superficially on what seemed to come within the sphere of rhetorical theory, namely a discussion of the Appuleian Law and an account of what it meant "to impair the majesty of the Roman people." I handled the whole case on the basis of these two elements of a speech, the one that recommends and the one that excites, neither of which is given adequate treatment in the rules of the handbooks. This implied giving the impression both of being very passionate when rekindling the indignation against Caepio, and of being very mild when demonstrating my character in my dealings with those to whom I am bound. So, Sulpicius, I bested your accusation in that case not so much because the jurors were informed, but because their minds were affected.[28]

Much the same thing can be said to describe Cicero's published defense of Milo. During this time in his life, Cicero was certainly interested in making known to a broader audience his own views on rhetoric;[29] through the publication of the *De oratore*, Cicero presented his portrait of the ideal orator and his work. We, likewise, can assume that one of Cicero's goals in publishing his speeches was to leave behind practical examples of effective persuasion. Published only a few years after the *De oratore*, Cicero's *Pro Milone* is a near-perfect oration, reflective in so many ways of the theories

[27] See Wisse, *Ethos and Pathos*, 278–79.

[28] *sic in illa omni defensione atque causa, quod esse in arte positum videbatur, ut de lege Appuleia dicerem, ut quid esset minuere maiestatem explicarem, perquam breviter perstrinxi atque attigi; his duabus partibus orationis, quarum altera commendationem habet, altera concitationem, quae minime praeceptis artium sunt perpolitae, omnis est a me illa causa tractata, ut et acerrimus in Caepionis invidia renovanda et in meis moribus erga meos necessarios declarandis mansuetissimus viderer. ita magis adfectis animis iudicum quam doctis, tua, Sulpici, est a nobis tum accusatio victa.*

[29] On this point, see Riggsby, *Crime and Community*, 178–84.

espoused in the *De oratore*, especially those that concern sources of proof found in *ethos* and *pathos*. It may, in fact, very well be the case that, in publishing his speech on behalf of Milo, it was Cicero's intention to present to posterity the ideal speech of the ideal orator.

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IV
The Orator in the Empire

CHAPTER 8

Returning to Tacitus' Dialogus[1]

by Michael Winterbottom

The opening chapter of the *Dialogus* gives us no precise indication of the date at which Tacitus is writing. He addresses Fabius Iustus, who was suffect consul in 102; the dialogue may, or may not, have been intended to celebrate that office. Fabius Iustus has often raised with Tacitus the question of the decline of oratory. But the matter had been discussed by a group of distinguished persons some years before,[2] and as the dialogue proceeds we find that it is one that has preoccupied them on earlier occasions still.[3] In this sense, then, the exact date of writing is of little importance. Tacitus is talking about something that had been under discussion for some, perhaps many, years. And indeed we know from elsewhere that it had been raised in previous generations: Seneca the Elder under Augustus, Velleius Paterculus under Tiberius, Pliny the Elder under Vespasian, and (in all probability) "Longinus" during this same century had thought they knew the reason for the decline, whether it was a matter of morality, education or politics. Aper, Secundus, Maternus, and the latecomer Mes-

[1] "Returning" because one of my first published articles was much concerned with the work ("Quintilian and the *Vir Bonus*," *Journal of Roman Studies* 54 [1964], 90–97), and I rather later translated it in *Ancient Literary Criticism*, eds. D.A. Russell and M. Winterbottom (Oxford, 1972), 423–59, and edited it as one of *Cornelii Taciti Opera Minora*, eds. M. Winterbottom and R.M. Ogilvie, Oxford Classical Texts (Oxford, 1975). I have been sparing in adaptation and annotation of the lecture given at the Kennedy Colloquium, a forerunner of which was given at the University of Munich in May, 1997.

[2] At least the dramatic date is fairly clear: 74 or thereabouts.

[3] See 15.1 (Aper had often heard Messalla declare that there were no orators any more). Cf. also 4.1 (Maternus and Aper have often discussed the different claims of oratory and poetry).

salla sit there, in the silent presence of the young Tacitus, discussing a problem that had concerned people ever since the death of Cicero.

And of course Cicero is much in our minds as we read these lines. The first section of the work is designed to echo the first section of the *Orator*. No less redolent of Cicero is the remark (1.3) that the participants in the dialogue produced different but "convincing" reasons for the decline in oratory: This is to be an Academic[4] discussion in the proper sense, where the final decision is left to the reader. But equally important is the rest of that sentence: Tacitus represents himself as giving the thoughts of these famous men exactly as they uttered them, "each marking them with the genuine stamp of his own personality and interests." They are all keeping to their characters. The importance of *ethos* is stressed from the start.

Tacitus remarks, then, on character as displayed in the arguments of the various speakers. But in chapter 2, where the scene is set, and in chapters 3–5.2, where the conversation leads up to Aper's first speech, Tacitus displays his skill in characterization by means of narrative description and particularly through the words he puts into the mouths of the speakers in less formal discourse. Maternus has offended the great, or so the story goes, by reciting a tragedy on Cato[5] "with no thought of himself" (2.1): He has ignored any danger he might be bringing on himself by the representation of republican sentiments. As for Secundus and Aper, Tacitus, with a hint of the techniques of the *Annals*, gives us the views of the "malign" on their oratory as well as his own firm defense of them. What he says of Secundus is of little relevance to us, because either this character did not speak at any length in the dialogue, or else his speech has been lost in the lacuna. If the former is the case, we have another paradox: The best known person in the dialogue is the only one who does not contribute an opinion. As for Aper, we are given a description that reminds us of Cicero again. He is pictured as someone who makes no claim to learning, though he is, in fact, perfectly well educated. He is, therefore, reminiscent of Marcus Antonius as portrayed in the *De oratore* (e.g., 2.1 and 2.4). The foundation is already being laid for later suggestions that Aper is taking the role of devil's advocate when he mounts his defense of modern oratory.

Now for characterization by conversation. Secundus and Aper enter Maternus' *cubiculum*. Secundus at once reacts to the news of the offense

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[4] Cf., e.g., Cicero, *Off.* 3.20: *nobis autem nostra Academia magnam licentiam dat ut quodcumque maxime probabile occurrat, id nostro iure licet defendere.*

[5] One wonders if the name may not have been put into Tacitus' head by a section of Cicero's *Orator* (35) that he had drawn on for other purposes in 1.2.

the poet has caused. He asks Maternus if the stories do not frighten him (*terrent*, a strong word). He suggests, hopefully, that Maternus is even now engaged in toning down his play. Maternus retorts that, on the contrary, there will be no changes; and there is another tragedy to come, equally outspoken. Aper, however, ignores the offense Maternus has caused altogether. He takes up a new line of attack, one that we soon find out is part of a continuing dispute between the two men. Why is Maternus writing poetry at all when he should be in the forum, taking up the cases of his friends or attending to the problems of his clients? With wonderful brevity, Tacitus sketches three characters for us. Secundus is timid; Maternus, relaxed. Aper goes for essentials: For him, a whole way of life is in question. The first act of the three-act drama opens.

Aper now makes a long speech (5.3–10.8) entirely in keeping with this first impression of him. It is carefully, even pedantically, structured. He argues under the headings of usefulness, pleasure, and reputation that the life of an orator is preferable to the life of a poet. That is to make what he says sound like a *προγύμνασμα*. In his discussion of the preliminary rhetorical exercises done by schoolboys, Quintilian remarks (2.4.24) on *θέσεις* such as "Is country life or town life preferable?" But he says that such an exercise is useful in real life. What he means appears at once: Such propositions will, he says, become *suasoriae* the moment persons are added. That is, the general *thesis* is turned into the particular *hypothesis.* Similarly, Aper does not argue abstractly; he "adds persons" in the minutest detail. His whole argument is directed, not to proving a general point, but towards persuading *Maternus* to act in a particular way in particular circumstances. He is not, he stresses, concerned with people whose talents deny them the possibility of oratorical fame. Saleius Bassus, and others who cultivate poetry because they are incapable of pleading cases in court, may rest secure (5.3). "My quarrel is with you personally, Maternus; your talent destines you for the heights of eloquence, yet you prefer to wander below: You could reach the top, but you potter over trivia" (10.5).

Equally, Aper's speech is firmly tied to a particular context in time. We hear how "recently" (in 70) Eprius Marcellus won a duel in oratory with the inexperienced Helvidius Priscus (a scene that Tacitus will go on to evoke in the *Histories*). Aper describes at length what eloquence has given to Eprius and to Vibius Crispus that they could not have obtained from anywhere else. And finally he brings in the emperor himself. It is Vespasian, we for the first time discover, in whose reign the dialogue is set. "That decent and fair-minded old gentleman" (8.3) knows that, while he may have made the fortunes of others, Eprius Marcellus and Vibius Cris-

pus have brought something to their friendship with him that he could not have given them. We would not know from Aper's speech what we learn from the *Histories*, that Marcellus and Crispus were hated informers, *delatores*, or what can be deduced from the prosopography of the Vespasianic period, that Vespasian relied on such people because he had a hold over them.[6] It is left to Maternus to bring out the unpleasant side of the picture that Aper draws of the orator's trade under Vespasian.

What Aper is concerned to establish—and he does it brilliantly—is the fact that there was a *point* in being an orator in that period. He portrays himself as a *novus homo*, "a new man," born in a "town which could offer me no advantages" (7.1), who had risen to the praetorship by means of his oratory. He had spoken at every level, even undertaking the defense of imperial freedmen and procurators before the emperor himself. This union of oratory with political advancement is not (*mutatis mutandis*) at all unlike the way in which a Cicero had risen to fame and fortune during the Late Republic. When Aper goes on to show how Eprius Marcellus and Vibius Crispus had come to the top, he is describing the same phenomenon. They, too, had not been rich or well born, but they had by sheer force of oratorical talent come to have influence with the emperor himself. They had moved from being "first in the forum" to being "first in the friendship of Caesar" (8.3). Aper's stress on the upward mobility allowed by oratory even under the Empire is a powerful argument not only against Maternus but against those moderns who feel that oratory after the Republic no longer had any *raison d'être*.

Eprius and Vibius, exploiting the friendship of Vespasian, *aguntferuntque cuncta* (8.3). That is a strong expression, redolent of those who plunder in war. These informers "carry all before them." What to Maternus will seem a good deal more sinister is something that Aper can not help admiring. This is part of his character. He is a πρακτικός. And he sees action in military terms. Oratory is something with which to arm oneself, and "if a note of personal danger sounds, breast-plate and sword in battle are not a stronger defense than eloquence to a defendant at risk—a weapon of offense and defense, enabling you to assail your adversaries or to ward them off" (5.6). And he goes on to talk of how Eprius Marcellus "girded on" eloquence when he battled against Helvidius Priscus (5.7). Maternus is summoned away from auditoria and theatres into the forum, and *ad uera proelia*, to real combat (10.5). This is a thoroughly Roman rhetoric, intended to show the superiority of the practical over the intellectual life,

[6] See my article referred to in note 1, 93.

and, in particular, to show that one should not decline a political career if one has the talents for it.[7] Maternus is not being criticized for being a poet, but for being a poet when he should be a public figure.

We have seen that at the start of the discussion Aper showed no interest in the offense caused to the great by Maternus' plays. But towards the end of his first speech (10.5–8), he does turn to that topic. He has just said that he has a proper respect for all kinds of eloquence, including poetry; but he reiterates that his quarrel is not with poets in general but with Maternus, who could be doing something more useful. Nor, he says, can Maternus take refuge in the common plea, that the life of the poet is safer than that of the orator. Maternus has himself been running into danger, and not for a friend, but for Cato. Aper is not "worried" about this danger, as T.J. Luce[8] puts it; rather, he uses it as a proof of Maternus' folly. An orator would run into danger for his clients: Maternus has gratuitously taken on an adversary too strong for him (the reference would seem to be to the emperor). He can not, therefore, claim that the poet's life is more tranquil. It should be enough for *us*, says Aper, "to take up private confrontations, and ones of our own period, and any offense that results is incurred in a worthwhile cause." Aper glories, as Cicero had done, in defending his friends and, if necessary, incurring criticism from powerful persons. Such cases are the "private[9] confrontations of our own period"; Maternus is fighting a battle that is political rather than private, and outdated in the sense that Cato is outdated. He is behaving foolishly.

It does not seem quite right to say, as Luce does,[10] that Aper's sketch of the orator's role in 10.8 is inconsistent with the picture of contempo-

[7] Compare an instructive section in Cicero's *De officiis* (1.71). It may be forgivable for scholars or invalids to avoid leading a political career: *quibus autem talis nulla sit causa, si despicere se dicant ea quae plerique mirentur, imperia et magistratus, iis non modo non laudi verum etiam vitio dandum puto.* The Roman elegists had to contend with this prejudice (cf. 4.1, *desidiam advocationum obicis*, with Prop. 1.12.1, *desidiae non cessas fingere crimen*).

[8] T.J. Luce, "Reading and Response in the *Dialogus*," in *Tacitus and the Tacitean Tradition*, Magie Classical Publications, eds. T.J. Luce and A.J. Woodman (Princeton, 1993), 23. I am in agreement with much in this excellent paper, to which I refer the reader for bibliography on the problems that I discuss; add now the acute article of S.M. Goldberg, "Appreciating Aper: the defence of modernity in Tacitus' *Dialogus de oratoribus*," *Classical Quarterly* 49 (1999), 224–37.

[9] Aper forces the contrast to the verge of paradox. His own *patrocinia* (he may be thinking of his defenses of imperial officials before the emperor, mentioned at 7.1, a potentially dangerous activity) seem discreet when compared with the all too public innuendoes of Maternus.

[10] Luce, "Reading and Response," 30.

rary oratory he had drawn earlier. Aper here, as in 7.1, concentrates on his own[11] activities in defense; perhaps that is what he, like Cicero, preferred. But that does not mean he can not admire other sides of oratory. Aper's inconsistency lies elsewhere. We have seen that in 10.5–8 he at last takes up the offense caused by Maternus' plays; but in so doing he can not avoid contradiction with his earlier claim that poets can not win fame in Rome, let alone the rest of the world, by even the finest recitation (10.2). Now he asserts that "this [i.e., covert political allusion in tragedy] brings immense applause, special praise in the recital-hall, and soon a topic for all tongues." We know from what has come earlier in the *Dialogus* (note esp. 2.1) that this is indeed true of Maternus.

Aper ends his speech. He had spoken, Tacitus tells us, "pretty pungently, as usual, and with a serious face" (11.1). He, it would seem, believes the thesis that he is putting forward, or at the very least has been inspired by his own eloquence to put it forward with conviction. Maternus, by comparison, starts his reply "relaxed and smiling." But by the time he has finished, Tacitus can describe him as "excited and, as it were, inspired" (14.1). *He*, certainly, has gained passion as he spoke, as a poet should. But this passion for us, and perhaps for his Roman audience, makes his reply less convincing than it might have been.

Aper has accused him of giving up the world of action, to which he is eminently suited, and relapsing into the world of poetry, while at the same time running unnecessary risks by choosing a type of poetry that is uniquely capable of offending the powerful. Maternus could have answered by saying that his tragedies provide the same sort of excitement and fulfillment that oratory gives to Aper. That is, he could revel in the dangers he has been running, as indeed he had seemed to in the opening conversation. Poetry would then be revealed to be for him a suitable substitute for the oratory he has grown tired of. In writing about Cato, he could claim to be making, in however covert a way, the political points that perhaps could not so easily be made in the forum. But he does not do this at all. In fact, he completely ignores the offense that his plays are causing. That leaves him free to say (as Aper [10.5] had hinted he would) that he prefers the "quiet security of Virgil's retreat" (13.1) to the struggles and perils of politics. But it makes little sense of what has gone before. All

[11] *Nobis* in 10.8 will mean "me," rather than referring to all contemporary orators. Even in the earlier passage, Aper, while not underplaying the offensive role of oratory, juxtaposes it with its utility in defense (thus, *praesidium amicis*, *opem alienis*, *salutem periclitantibus*, *invidis vero et inimicis metum et terrorem ultro ferat* [5.5]; *praesidium simul ac telum* [5.6]; note also *discrimina commendent* [6.2] and *defensus* [9.2]).

nuance is lost, and the speech of Aper, so nicely focused on the particular circumstances of Maternus' life, goes for nothing. Here, for me, lies the major problem of the *Dialogus.*

It is true that Maternus had started his speech by reacting to Aper's personalized attack on him. Aper had claimed that someone so distinguished as an orator should not fritter away his talents on poetry. Maternus replies by playing down his oratorical successes: His reputation has always rested at least equally on his poetry. He makes a brief allusion to his role in the breaking of the influence of Vatinius under Nero (11.2). We do not know the story, and we can not be quite sure that the reference is to the sort of politically significant tragedy we heard of earlier. Now, in any case, Maternus wants to "unyoke" himself (*me deiungere*) altogether (11.3), and his speech becomes a contrast of the unattractive nature of oratory with the agreeably relaxed life of the poet. He takes up Aper's gibe that poets tend to give up their friends and the pleasures of the city in order to retreat "to the woods and groves, that is, to a life of solitude" (9.6). Maternus claims that it is just in this retreat to the countryside that he finds his greatest pleasure, rather than in the hubbub of the city, *in strepitu* (12.1)—a word that takes us back to another passage (Horace, *Carm.* 3.29.11–12) where a poet in the countryside feels superior to a politician in Rome: *omitte mirari beatae/fumum et opes strepitumque Romae.*

But another piece of Augustan poetry is more relevant still, and it is one to which the reference to the Golden Age might, in any case, have pointed us. At the end of the second *Georgic,* Virgil conducts a highly wrought contrast between the innocent life of the countryside and the mad life of politics in the town. He uses the fine words *Me uero primum dulces ante omnia Musae . . . accipiant* (2.475–77), and Tacitus directly cites these in 13.5. He goes on to allude to Virgil in the words *insanum . . . forum* (*G.* 2.502), and less obviously to an earlier passage in which Virgil speaks without enthusiasm of the high household that *mane salutantum totis uomit aedibus undam* (462). Maternus, by these means, equates his own withdrawal to the "woods and groves" with the rejection by Virgil of the unreason of public life. The philosophical person praised by Virgil is not moved by the Dacian coming down from the Danube, or by *res Romanae perituraque regna* (497–98). Maternus, in his new mode, his tragedy forgotten, is equally dismissive of state matters; and his speech is, in some respects, as rhetorical and unconvincing as Virgil's splendid paragraph.

But that is not the whole story. Maternus does not always talk in pious platitudes, and he adds a new and vital dimension to Aper's complacent picture of modern oratory. He brings a *moral* judgement to bear on the

phenomena that Aper has described so blandly. Much earlier he has called poetry "an eloquence that better deserves my respect and reverence" (4.2). Now he finds that *innocentia* is a euphonious as well as a rhetorically persuasive counterpart for *eloquentia* (11.4). The places to which the poet retires are "fresh and innocent" (12.1), whereas the oratory of Marcellus and Crispus, so admired by Aper, is now revealed to be "profiteering and bloodstained" (12.2). Poetry is the singing of good deeds; oratory, the defense of bad ones. Maternus' reply shows up a weakness of Aper's case. If Aper had restricted himself to the commendation of a lawyer's life in the terms of 10.8, the defense of friends in peril, he could not be faulted. It is because he extended the argument to orators like Marcellus and Crispus that he failed to carry us with him.

Such considerations do not *explain* why Tacitus starts a dialogue on the decline of oratory with a discussion of the relative merits of oratory and poetry. But one *result* of this discussion is to give us a nuanced portrait of oratory in the time of Vespasian. It is, to judge by Aper, vigorous and lively, but, to judge by Eprius and Vibius, dangerous and corrupting. Maternus, standing a little outside the battle, enables us to see the darker side.

We come now to Act II of the drama, the twinned speeches of Aper and Messalla in chapters 16.4–26.8. The subject has now become, and will remain, the decline of oratory. I need say little about Messalla's contribution. It is Aper's speech that matters. Most crucially, he anticipates the arguments of Maternus in the last pages of the book. Messalla has raised the question of the parallel with the decline of Greek oratory at 15.3, and Aper takes him up at 16.5–6, remarking that Demosthenes and Hyperides both lived in the time of Philip and Alexander. This correlation is significant: Aper is hinting at the fact that political oratory in Greece came to an end with the fall of Athens to Macedonia. Similarly, when Aper comes on to Roman oratory, he stresses the fact that Cicero was killed in the year of a suffect consulship of him who was to be Divus Augustus (17.2). Though he does not draw the political conclusion explicitly, he firmly establishes the general principle that oratory changes with circumstances: *mutari cum temporibus formas quoque et genera dicendi* (18.2). He illustrates this in various ways, one of which, the new court procedure of the imperial period, anticipates a point made by Maternus (19.5; cf. 39.3).

It is easy to feel that Aper makes too much of his opening argument about the relative shortness of the period that separated his own time from that of the "ancients." But this sophistic display is designed to bolster an important point. Aper asserts that Cicero and the rest are not really *antiqui* (17.1) in the sense that Menenius Agrippa was and, again, that the fame

of the late republican orators is "on the borderline" between the periods,[12] whereas the likes of Servius Galba are genuinely old (18.1). But this is only a provocative way of saying that any blanket contrast of the Ciceronian age and what follows is untenable. Aper's speech aims, intelligently, to blur the outlines of accepted literary periodization.

He does, of course, make a continuing and effective contrast between old and new: between the boring and colorless nature of the past and what he represents as the brilliance of the present. There is no need to collect all the examples. Ancients like Servius Galba are called "uncouth, unpolished, crude and coarse" (18.1); others are mere skin and bones, and belong in a hospital (21.1). Again, Aper talks of "long speeches, cluttered with irrelevancies," and the praise given of old to those who spent all day on their feet (19.2: something, in fact, not unknown to the younger Pliny). The early speeches of Cicero are "those immense books on our shelves" (20.1); they show him "slow in his proems, verbose in his narrative, lax in his digressions" (22.3). In a telling analogy, Aper contrasts the temples of the past, built in rough stone and ugly tile, with those of the present which gleam with marble and gold. That is resonant of the change Augustus brought to the buildings of Rome; and for Aper it is what the Augustan empire brought to Roman oratory. He speaks of the "bright luxuriance of our times" (21.9). Modern oratory is brilliant; that of the past was dull.

But Aper can single out for praise in a republican orator what he regards as foreshadowing modern virtues. Calvus, generally unremarkable, is praiseworthy for at least one of his Vatinian speeches, which was "brilliant in language and in content, and entirely suited to the tastes of the jury, so that you can see that Calvus too realized where his style required improving; he did not lack the desire to speak more loftily and with more refinement, only the talent and the strength" (21.2). Caelius is given similar treatment (21.3–4). In this way, Aper can represent the history of Roman oratory as a gradual process; the future gleams through in the dullest pages of the past. He can use this technique to praise, in a rather backhanded way, the oratory of Messalla, who so much disapproves of modern ways. "I see you," he says, "imitating the richest passages (*laetissima*) of the ancients" (23.6). But, more importantly, he uses it to contrast early with late Cicero.

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[12] I now agree with Güngerich's understanding of *in medio sitam:* "nicht 'beiden Zeiten gemeinschaftlich', sondern 'zwischen beiden liegend', so dass es fraglich ist, ob es zu einer der beiden Zeiten gehört und zu welcher"; Rudolf Güngerich, *Kommentar zum Dialogus des Tacitus* (Göttingen, 1980), ad loc., 73.

We have seen that he criticizes the early speeches of Cicero for their length and tedium, and for their lack of epigram. But as Cicero grew older he learned to do better (22.2): "he even attempted more flowery passages, and happened on a number of epigrams, at least in the speeches he wrote as an old man at the end of his life—after, that is, he had developed, and discovered by practice and experience what the best style was" (a hint there at the *Orator*). There are signs of what was to come, therefore, long before the high Augustan Cassius Severus[13] (19.1, 26.4).

Aper finds Cicero particularly remarkable for his *iudicium* (22.1). He had, Aper means, the judgement to see that oratory needed to move on. That was the crucial thing. Cassius Severus was later to have it too (19.1). Contrast Calvus, who "realized where his style required improving; he did not lack the desire to speak more loftily and with more refinement—only the talent and the strength" (21.2). And something similar is said of Messalla Corvinus in 21.9: He had *iudicium*, but not the capacity to act upon it.

Aper's picture, then, is not of a sharp break but of a series of advances, made intentionally and with forethought, towards a better style. For he has no doubt that things are getting better: "A thing is not automatically worse because it is different, but men are so jealous[14] that the old always receives praise, the new scorn" (18.3). But, unfortunately, it did not follow that the new was necessarily *better*. In the end, Aper's assertions are no more than assertions. He says that the modern style is more attractive and pleasurable than the old. But he can not prove that it is thereby superior. Equally, for Messalla, though things improve up to a Golden Age under Cicero, they have got worse steadily since then. Like Aper, he has his ways of putting his contrast persuasively. The old-timers, boring and dull for Aper, are for Messalla splendid and dignified. The moderns, brilliant for Aper, are tawdry and artificial for Messalla. There is no proof provided on either side. And it would be unreasonable to ask for such proof. Act II of the dialogue is engaged with a question that is not susceptible of demonstration. It presents two opposed ways of looking at the development of Roman oratory. Only *we* could decide which is the more convincing, and we lack crucial parts of the evidence on which to make a judgement.

[13] He was banished, it would seem, as late as 12 A.D.

[14] There is a reminiscence of the argument of the first part of Horace, *Ep.* 2.1. *In fastidio* looks to Horace's *fastidit et odit* (22). So, even more obviously, does 23.2 in a similar context. (We might perhaps, after all, read *fastidiunt* <*et*> *oderunt* with the corrector of the Leidensis; alternatively, *oderunt* will be the addition of someone who remembered his Horace.)

Will Act III do any better when it comes to analysis of the reasons for the change that Aper and Messalla have so differently portrayed?

The first speaker in the final pair is Messalla. His speech is divided into two, with a pronounced closure at 32.7 and a renewed start (*quasi rursus incipiens*) at 33.4. The second part is insisted upon by Maternus (33.1–2), when Messalla thought he had already done his bit (32.7). Interestingly, Tacitus seems to have made a slip here. Before the fresh start, Messalla has announced that he will go on to talk (*statim dicturus*) of the *rhetores*, their introduction into Rome and the lack of esteem that they were accorded (30.2). Yet he does not come on to that topic until the second half of the speech (35), the half to which he should not have been able to look forward. I presume that this is carelessness on Tacitus' part, rather than any color in the characterization of Messalla. That characterization is, in any case, carefully attended to. It is probably not irrelevant that he is a Roman, who marks himself off from the others at 28.3 and seems to regard himself as the expert on the vices of the city itself as opposed to the provinces (29.3). Maternus thinks Aper had offended him, "by criticizing [his] ancestors" (27.1). The editors will be right to see an allusion here to Messalla Corvinus, not always tactfully treated by Aper (20.1, 21.9; but note 18.2). At any rate, Messalla does seem to think his own speech is causing offense (32.7); he implies that he irritated people by his insistence on the orator's need for knowledge of law and philosophy, "my follies" (*ineptiae meae*). He is, indeed, portrayed as a man with several *idées fixes:* not merely law and philosophy, but the supreme merit of the old oratory (Maternus has to tell him twice he does not need to praise it in this company [24.3, 27.1]), and the *mos antiquus* generally. It is the *obliuio moris antiqui* that forms the climax of his list of reasons for the decline of oratory at 28.2. His speech is full of contrast of past and present, of course, to the detriment of the present, but he seems to reserve special emphasis for the topics likely to provoke the old bore of the kind he approaches: the immodest naughtiness of modern children, and the absurdity of the declaimers. (This presumably could offend Aper.) In at least some of these respects he does, as many have pointed out, to some extent resemble Quintilian, whose *Institutio* may well have been published not long before Tacitus was writing the dialogue, and whose lost book *De causis corruptae eloquentiae* is surely what Tacitus was in particular replying to.[15]

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[15] And if the book had not yet been published, Tacitus will be reacting to the known views of its famous author. It does not, incidentally, seem to me impossible that Quintilian anticipated Aper in connecting the decline of oratory with political developments, at least for

Another respect in which Messalla resembles Quintilian is in the structuring of his speech around the various stages of a student's life: We move, as Quintilian did, from infant to child to youth. In each case, Messalla is concerned to show how far the present way of doing things has degenerated from the past. There is no need to say much about the earliest stage. Older men have always thought children are not being brought up as strictly as they were when they were young themselves. I merely point out that when Pliny writes to Calpurnia Hispulla about the virtues of her niece he says they are not surprising: "nor would anything else be suitable for a girl brought up by your hands and trained in your precepts, who has seen in your company only what was pure and moral" (*Ep.* 4.19.6). That diverges markedly from the fevered picture painted by Messalla at 29.1–2. But perhaps small girls were different. Messalla says little about the *grammaticus* stage, perhaps because there was little to say that would support his case. He seems to imply in 30.1 that children were rushed on to the next, declamatory stage, to their own detriment. And his talk of the presence of *pueri* in the rhetorical schools may point the same way (35.3–4). If this is the case, it conflicts with the remarks of Quintilian in *Institutio* 2.1, where the complaint is the opposite one, that the grammarians hold on to their pupils too long and try to teach them rhetoric themselves. Perhaps it all depended on what you were trying to prove.

As we saw, Messalla says at 30.2 that he will soon be telling us (*statim dicturus*) about the rhetorical schools. But for the moment he does not. Instead, he proceeds to praise of the old training given to orators in philosophy and law. This move is faulty in several ways. Such education was not received by everyone in the old days. Indeed, Messalla's picture of its advantages seems, as Luce says,[16] to be an illegitimate deduction from the unique case of Cicero. Again, philosophy was by no means neglected in his own day. Aper seems to imply in 19.4–5 that even the casual listener in the court had some tinge of philosophy. And philosophers were worth expelling under Domitian. More importantly, Messalla is completely misleading when he says in 31.1 that the Romans of old thought that the best way of training an orator was to concentrate on philosophical instruction rather than unreal declamation. That is, as it were, a category mistake. You did not study declamation at the same time as philosophy or in competition with it. Philosophy came later, if it came at all. As for declamation, it

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Athens. He certainly resembles Messalla in his criticisms of the excesses of Roman education and morals.

[16] Luce, "Reading and Response," 21.

was part of the syllabus of the young Cicero. Messalla stops his straightforward contrast of past and present after the grammatical stage because he does not wish to admit that in this respect things have *not* changed. The *rhetores* were influential in the first half of the first century B.C., just as they were under Vespasian. Similarly, when Messalla comes on to the second part of his speech, he contrives to contrast past and present by pitting the *tirocinium fori*, which he represents as an out of date practice (34.1–5), against the rhetorical schools. Again, there is a deep flaw in the argument. Again, one must stress that the rhetorical education had not changed in essence since Cicero was young. But equally the *tirocinium fori*, the practice by which the budding orator attended the speeches and private conversations of the great speakers of the day, is not something that had died out at all.[17] Aper has talked, and there is no reason to doubt his word, of the "youths still on the educational anvil, who pursue orators for their own scholastic advantage" (20.4). Even more dramatically, the very dialogue we are reading is an account of the *tirocinium* at work. The young Tacitus sits there, listening to all this talk, precisely in order to master the craft of oratory by getting inside the minds of the orators of his day.

We do not know if Messalla gave the second part of his speech as emphatic a closure as he gave the first. Indeed, we know little about the contents of the great lacuna, not even how great it was. It does seem from what Maternus says at 16.3 that Secundus said something, and at some length; in any case, one wonders, otherwise, why he is present at all. And the *singuli* who at 1.3 are said to provide their different reasons for the decline of oratory might seem likely to include more than the pair Messalla and Maternus. It is more difficult to imagine what Secundus might have said. Nor can we know how Maternus started the speech that is in progress after the lacuna and that lasts until almost the end of the dialogue. But one assumes that he will have started it by making clear what we should deduce from the portion that we have, that he is, so to speak, making a chairman's summing up after a fractious meeting. It is easy to think that he represents the view of an author who was also, or was to become, a historian, that he brings to the discussion a new and wider perspective and corrects the narrow or mistaken views of those who have spoken earlier. Something of that must be true. The fact that he speaks last gives him an advantage and a weight that we can not overlook. But he does not seem to be speaking polemically. He does not, at least not in the part we have, attack anything that Messalla has said about the influence of education on

[17] Ibid.

oratory. He merely speaks from a higher viewpoint. But it is important to reiterate that he is not going far beyond what Aper has said. The central theme of Aper's second speech, that oratory changes with the circumstances in which it is spoken, is central to Maternus' last speech too. Aper had not thought it his business explicitly to extend the point to politics (though his chronological remarks in 17.2–3 have the effect of reminding us what has been happening during the previous century). Maternus does that. The change in oratory is the inevitable result of the principate, as well as of the less vital changes that Aper *did* analyze.

Like Aper and Messalla, Maternus conducts a contrast of present and past. Like them, he over-colors it. He makes it sound as though the past had a monopoly of grand cases with large audiences and high public attention. In fact, we know from the letters of Pliny that there were still cases of importance, including prosecutions of errant provincial governors like Marius Priscus. The whole drift of Aper's speech, unrefuted by anyone, is that being an orator could lead to a satisfying career with political consequences. Aper had said that, though a new man, he had been quaestor, tribune, and praetor (7.1), while at the same time remarking that he felt himself to be ascending above tribunates and praetorships and consulships (7.2). Maternus says in 36.5 that in the old days orators appeared to be summoned *ultro* by praetorships and consulates. Aper seems to suggest that the same is still true.

Aper had used the careers of Eprius Marcellus and Vibius Crispus, who held four consulships between them, as evidence of the importance of oratory in his day. As we have seen, it is unlikely that Tacitus meant us to be too happy about that assertion. The key to great influence as an orator seems to have lain in being less scrupulous than a Maternus, or a Quintilian, would have wished. Yet the picture now drawn by Maternus of life under the principate does not include such disagreeable persons. His bland and happy world has no room for delation, and the speaker hardly sounds like the Maternus portrayed in the early pages of the dialogue. What has happened to the competitive and fractious world so vividly portrayed earlier, and to the outspoken playwright?

It is here that most scholars locate the major contradiction of the *Dialogus*. As S. Bartsch[18] puts it: "It is this same Maternus [i.e., the Maternus whose political outspokenness was earlier so much stressed] whose fulsome encomium of the present régime in the last debate brings the dialogue to a close . . . we can do nothing to mitigate the fact that Tacitus

[18] Shadi Bartsch, *Actors in the Audience* (Cambridge, 1994), 113.

ascribes this praise to the one character from whose mouth it will have the least credibility."

Bartsch is here arguing against the powerful case made by Luce that each speaker in the dialogue makes the best case he can in each speech he gives, with no thought for consistency. Luce's view is rather like that of the younger Wilamowitz on characterization in the plays of Sophocles, and it leaves us similarly dissatisfied. Luce, indeed, may be thought to be re-stating the problem rather than solving it. Surely, by any standards, Tacitus has here just made a blunder. He could, after all, have given the final speech to Secundus, with whom the others earlier toyed as an arbitrator between Aper and Maternus. But he did not, and the contradiction into which he seems to fall is not to be glossed over.

Bartsch herself does not follow Luce in supposing that Maternus' final speech is to be taken at face value. But neither does she see it as ironical. Rather, it is for her an example of the "double-speak" forced on speakers and writers under the principate. It can be taken either way. "It offers," she says, "dual meanings to its different audiences, pro- and anti-imperial."[19] The analysis is attractive. But it is unclear that it makes any more coherent sense of the dialogue than Luce's. Bartsch can summarize the dialogue by saying that it is "about how the conditions of the principate have encouraged the indirect medium of poetry to take over from the forthright voice of oratory."[20] But that seems hardly to re-establish the unity of the book. What sort of a dialogue is it when, before the same audience, sympathetic and in no need of being deceived, Maternus *both* voices determination to continue in a course of politically subversive tragedy *and* praises the régime in a manner so nuanced that no one is sure how to take it? The problem of Maternus' characterization and the unity of the whole persists.

We should perhaps be making a distinction. What we feel to be contradictory between what might be called early Maternus and late Maternus is not one thing but two. There is his writing of political tragedy, but there is also his bitter criticism of the *delatores* and the influence that such people have in Vespasian's Rome. The former, the tragedy, does seem to clash violently with Maternus' last speech. But it is noticeable that it also produced problems at an earlier stage. As we saw, the smooth course of Aper's first speech is thrown out by what is no more than an appendix on Maternus' plays, which, he argues, destroy the poet's claim to tranquillity, but which, we noticed, also destroy Aper's claim that poetry can not bring fame. Re-

[19] Ibid., 115.

[20] Ibid., 119.

membering, too, the fact that the motif of Maternus' writing of tragedy elsewhere *only* appears in the introductory section (from 2.1 to 3.4), we may wonder if Tacitus has perhaps brought it in as an afterthought to a work that had originally been slanted rather differently. If we ask why he might have made such a change, the answer could be that the death of Domitian provided an opportunity to give the work more political bite. We are left, it is true, with a dialogue whose coherence is seriously flawed. But that is the problem from which we started.

I hope that those who find this suggestion absurd will not, therefore, at once dismiss what I shall say about the other source of the perceived dual contradiction, the treatment of Eprius Marcellus and Vibius Crispus. I should not, myself, regard it as impossible that this motif too, with its repercussions on the speeches of both Aper and Maternus in Act I, was another post-Domitianic insertion. But I am rather inclined to argue that in this respect what Maternus says in Act I is not inconsistent with what he says in Act III. I should not quite agree with Luce[21] that the difference is caused by a difference of rhetorical aim between the two speeches. The point is rather that Maternus is answering two different questions. In Act I, he is answering the question: Why do you insist on restricting yourself to poetry when you could go on being an orator? Here adverse comment on the politics of the day is appropriate, even unavoidable. In Act III, however, he is answering the question: Why has oratory declined to such an extent? Maternus at one point remarks (37.6): "As I keep saying, we must remember the question under discussion." *He* never forgets it.

As put by Tacitus at the very start, and repeated by Aper at 15.1, the question is thus phrased: Why is there no orator left in "our age particularly" (1.1) or (in Aper's formulation) "at this time"? What age and what time? Not, surely, only the time of the dramatic date of the dialogue. The change is a much older phenomenon than that. Aper, we saw, sees the change as starting right back in the late republican period. Maternus looks back almost as far. Talking of the changing importance of the centumviral court, he says something of much wider import (38.2): No great orator of the past spoke in that court, except for Asinius Pollio, and he only "in the middle of Augustus' reign, at a time when a long period of peace, continuous public calm, unbroken tranquillity in the senate, and particularly the restraining influence of the emperor had combined to pacify eloquence herself, like everything else." Even by, say, 10 B.C. the change had come about.

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[21] Luce, "Reading and Response," 33.

The whole burden of the final speech is that the imperial peace, ever since the early days of Augustus, has cut away the roots of the great oratory that had flourished in the turmoil of the Republic. That peace is no doubt exaggerated. In particular, Maternus does not advert to the fact that Vespasian had come to power after a clash of provincial armies all too reminiscent of the civil wars of the republican period. But the generality is sound enough. The empire was at peace within and without, and had been for many a long year. The Republic had seen (40.4) "no peace in the forum, no agreement in the senate, no settled routine in the courts, no respect for superiors." The Empire is exactly the opposite (41.1–4). There is no need for fine oratory in court (so placid the time) or senate (so well do senators agree), and there is *obsequium* towards the single ruler. Maternus does allow for "some trace of the old ways,"[22] including a hint of provincial misgovernment. But he chooses to finish on an upbeat note: All is well with Rome. But my point is that his characterization of the principate is not meant to be specific to Vespasian's reign. It is general to the whole century. The "one wisest man" is *any* emperor. Against so wide a background, the misdeeds of an Eprius or a Vibius fade into insignificance. They are not in the same league of villainy as Catiline, Milo, Verres, Antonius, all cited earlier (37.6) as the men whose crimes enabled Cicero to make his reputation. Eprius and Vibius can not, as those did, affect the *magna quies* (41.5) of the state. As for emperors, only the worst would forfeit the appellation of *sapientissimus et unus*, or be notoriously incapable of *clementia.* The average emperor was a good enough substitute for the oligarchs whose quarrels had destroyed the Republic.

Such a view was, I think, close to the view of the historian Tacitus. He occasionally expresses impatience with martyrs whose opposition to the régime gets them nowhere and is only a kind of ambition.[23] He sees no chance of the restoration of the Republic, whatever that might mean. His heroes are his father-in-law, Agricola, and Marcus Aemilius Lepidus, people who steered a middle course, avoiding flattery but making no protest against the way of the world. That, no doubt, is how Tacitus himself had prospered under Domitian. He might, to titillate his readers, paint unflattering portraits of earlier emperors. He sees through the smokescreen of imperial propaganda. But that was a different matter from wishing the imperial peace away.

We should, I think, trust our sense of closure in the *Dialogus*, in par-

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[22] Though the text at the start of 41.1 is uncertain.

[23] *Ag.* 42.4: *plerique per abrupta sed in nullum rei publicae usum ambitiosa morte inclaruerunt.*

ticular with respect to Maternus. He ends his first speech at 13.6 with an allusion to his own death—"for one day death will come to me too." He wants to die with a modest subsistence, to be honored with a statue that is cheerful of countenance and crowned as a poet's should be; no one is to take public steps about any memorial to him. That is not, surely, a *vaticinium mortis*, but the affecting expression of a wish to live and, when the time comes, die, as a poet far from political concerns. Again, at the end of the book, Maternus finishes his speech with talk of the great peace, of the benefits of the age. He and Messalla exchange words that look forward to another discussion another day. The three are sent away, with wonderful brevity, to re-join circles of like-minded friends: Maternus' fellow poets, Messalla's antiquarians, Aper's schoolmen.[24] "They laughed; we parted." Tacitus goes too. Can this really be an ending meant to leave a sour or ambivalent taste in our mouths? The little scene is redolent of the life lived by Pliny and his friends, cultured, rather earnest, supremely conscious of its blessings. Did Tacitus really see his own age so differently?

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[24] Maternus then remains a poet, though we might be forgiven for having forgotten it. But it is noticeable that he has not been haled off to an immediate *maiestas* trial. As for Aper and the schoolmen, Messalla had earlier (14.4) twitted him with spending time, *novorum rhetorum more*, on "scholastic *controversiae.*" Güngerich (ad loc., 11) seems to be right in distinguishing respectable "practice speeches" (*arcana semotae dictionis* [2.1], *declamatorio studio* [14.3]) from the suspect declamation indulged in by Aper (though it is clear that *controversias* in 10.8 can not refer to declamation). But this does leave difficulties. It seems odd that the thoroughly practical Aper should be a declaimer on the side: Note how he contrasts *vera proelia* with what goes on in Maternus' auditoria (10.5), in the same tone of voice as is often used by critics of declamation (as in Quintilian, *Inst.* 5.13.45 where *ubi vera res agitur* is opposed to the schools). Still, he does at 23.2 imply favor for "our rhetors" as against the older orators.

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CHAPTER 9

Figured Speeches: "Dionysius," Art of Rhetoric *VIII–IX*[1]

by D.A. Russell

There is much of interest in the "Dionysius Rhetoric"; George Kennedy, dating it 150–250 A.D., briefly discusses its epideictic chapters.[2] Here I offer him some remarks on VIII and IX, which I shall call A and B, the two essays on "figured speeches." I would not dissent from his dating, but nothing is certain. L. Radermacher, with arguments that are far from conclusive, thought the third century the earliest possible date.[3] He also held that one could reasonably believe the two pieces to be alternative versions of a single teacher's lecture. One's lectures do, of course, vary from year to year, and rightly so, but the differences between A (295–323, Usener-Radermacher) and B (323–58) seem to be substantial. It is true that the basic classification is the same (and distinct from other known treatments of the subject), and their examples overlap largely, though the order is different. But they claim to be addressing different opponents and to have different polemical aims. Let us begin with these.

What A sets out to do is very simple. He opposes *rhetores* who deny that a whole speech can be "figured," but allows that portions of speeches may be. Their argument was that it would be impossible for an audience to understand what a whole "figured" speech was about. Now, many of A's examples are, in fact, from parts of speeches, or from speeches taken from the narrative of epic or history, and so set in a context that makes their

[1] This paper is based on some that I have given to seminars in Oxford and Cambridge in recent years. As no English translation of these texts is available, I have translated some passages at length.

[2] George Kennedy, *The Art of Rhetoric in the Roman World* (Princeton, 1972), 634–36.

[3] *Dionysii Halicarnasei Opuscula*, eds. H. Usener and L. Radermacher, vol. 2 (Stuttgart, 1965), xxiii.

purpose clear. It may be doubted, therefore, whether A makes good his point against these opponents. His other object is to show, again against opposition (295, 13), that examples of these devices can be found in the ancients, the classical *βιβλία* of all kinds that we study (298, 2). In this, both A and B diverge from other known treatments of the subject ("Hermogenes," "Apsines"), which are strictly directed to the practice of declamation. For both A and B, who clearly have a rather higher view of their calling as educators, this is not in the center of the picture. It is their attempt to find *ἐσχηματισμένα* in the *βιβλία* that gives them the claim to attention not only of historians of rhetoric, but of students of critical theory and the development of taste.

B claims to go deeper than A. His assumed opponents (323, 6–25) are people who deny that there is a figured mode (*ἰδέα*) of speech at all: "One must either speak straightforwardly (*ἁπλῶς*) or not speak at all." Speaking with hidden meaning (*καθ' ὑπόνοιαν*) is not an alternative, because, if the hearer understands, he might as well have heard a plain story, and, if he does not, the speaker has failed in his task of communication. The answer to this is a general observation. So far from being no such thing as a figured mode, all speech is figured; none is simple or unfeigned. We can not address anyone without a figure, since our mode of address is tailored to the individual and the circumstances. It may convey kindness, modesty, humor, happiness, admiration; it must convey *something*. Invitations to private dinners are also figured; we do not use the same form of words to everyone. Claiming repayment of a debt is the same: It requires tact and management appropriate to the individual.

Now, the position that there is no such thing as *λόγος ἀσχημάτιστος* is known and combated by the author of a treatise *On Figures of Speech and Thought*, Alexander Numeniu, a famous *rhetor* who is said to have contributed a speech on the death of Antinous in 130. And it is, of course, an old debate, bound up with the ambiguity of the word *σχῆμα*—shape, or false or assumed shape?—and with the view of Caecilius and others that the mark of a *σχῆμα* is to be "contrary to nature" (*παρὰ φύσιν*), there being assumed always to be a "natural" way of saying something, to which the "figured" way can be reduced. Alexander's argument is of interest as giving the background of B's speculations; I, therefore, digress briefly to describe it.[4]

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[4] L. Spengel, *Rhetores Graeci* (Leipzig, 1856), 3.11, 18–13, 20. I attempted a translation of this very difficult text in *Criticism in Antiquity* (Berkeley, 1981), 176–78; I should not now want to hold to all the decisions that I then made.

Alexander's opponent denies the separate existence of figures of thought on the ground that "it is not easy to find an unfeigned utterance," because all utterance represents ψυχή and ψυχή is always in motion. This has a philosophical ring, perhaps a faint echo of *Phaedrus* 245c, where Plato's proof of the immortality of ψυχή rests (in our texts) on its being perpetually in motion. The *motion* that the exponent of this view has in mind, however, is a limited, intellectual one—a process of "defining" or "counseling" or "reproving." (B's homely examples—the dinner invitation and so on—make the same point, that the commonest verbal acts of daily life depend on perpetually changing circumstances.)

Alexander replies on what seem to be Caecilian lines with a set of alternative arguments, "one sure if another fails." I give translations of the relevant passages:

> (i) If there were no difference between the natural and the figured, *rhetores* would be no different from ordinary people (ἰδιῶται), and one *rhetor* would be no better than another. (11, 31–12, 1)
> (ii) The ψυχή itself [which λόγος imitates] always has a σχῆμα of some sort, but has some "natural" movements and some "contrary to nature," the former when it is in a stable and sensible condition, the latter under the influence of emotion, which gives rise to "emotional" λόγοι. Similarly, with λόγος itself, when it is "shaped" (ἐσχηματισμένος) by nature or habitual usage, it does not deserve to be called σχῆμα. Sometimes, however, it is made up to represent these emotions (παρὰ ταῦτα πεπλασμένος), and then we do say that it is "figured." (12, 7–14)
> (iii) Even if we concede that every λόγος has a σχῆμα "by nature" [that is, if we go back on the previous argument], that is not true of oratory and prose in general (πολιτικὸς καὶ συγγραφικὸς λόγος), which "imitates" real speech. For example, . . . in real life, we have real doubts (ἀπορίαι); in speeches we can pretend: "In the other Greeks—should I call it wickedness or ignorance or both?" [Dem., *On the Crown* 20] It is this mimic form that is specially a σχῆμα [and is the subject of the treatises on figures]. (12, 15–26)

Similar arguments are produced about figures of speech, to counter the idea that every arrangement of words is "figured," just because it is an arrangement. At the bottom of all Alexander's argument is the assumption that a σχῆμα can be removed and the sense of the utterance conveyed in a "natural" way.

So, in introducing his subject as he does—opposing the denial of fig-

ured speech by showing that in a sense all speech is figured—B has taken over a grammatical theory with some philosophical pretensions that was part of a school discussion about figures of speech and of thought. He applies it to whole speeches instead of individual phrases. If you like coining words, you can say he moves from "microschematics" to "macroschematics." It is an easy move, and one can sometimes see it being made. Both A (306) and B (347) speak of the multiple purpose of Demosthenes' *On the Crown* (multiple purpose, as we shall see, is a form of σχῆμα in whole works) as comprising defense, accusation, encomium, and protreptic. Almost the same points are made on the small scale in the traditional interpretation of *On the Crown* 208, the Marathon oath, of which Longinus (16.3) gives the classic formulation: demonstration of innocence, example, confirmation, encomium, protreptic.

Let us turn next to the classification of "figured λόγοι" given in our two treatises. Both give the same three main classes. They both add a fourth, but they seem to have different views of its relation to the others.

The first type of σχῆμα consists in saying what you mean, but with "decency" (εὐπρέπεια), having regard to the distinction of the persons involved and to "security in respect of the audience," which presumably means not shocking or offending them.[5] A identifies this with χρῶμα, *color* in Latin, the common rhetorical term for a gloss or cover-up. B's illustrative example (324, 9–22) is instructive. In *Iliad* 15.168–204, Iris brings Poseidon a message from Zeus, threatening the worst if he does not give up fighting, and Poseidon responds defiantly, claiming equality with his brother on the ground of the original division of the universe into three lots. Iris says:

> Dark-haired Earth-shaker, am I then to take
> this harsh and violent message back to Zeus?
> Or will you change your mind? The good have minds
> that can be changed! The Erinyes, you know,
> are always in attendance on the elder.

In this little speech, says B, Iris praises Poseidon so as to make him willing to listen to her plain speaking. That is, she uses honorific titles, themselves virtually a σχῆμα; we saw (323, 15) that modes of address inevitably involve σχήματα. She implies also that he is one of the "good" folk who are amenable to persuasion. His threat to Zeus she describes with the colorless word μῦθος (message). This is quite a simple procedure, and it can,

[5] For this concept, see Demetrius, *Eloc.* 287ff.

of course, be extensive enough to cover a whole speech. Perhaps it is the only sort of macroschema useful in real situations.

Certainly the second type (296, 14–20; 324, 23–327, 18) is much trickier. It is defined as "saying one thing and intending another." Its basic method, according to A, is to put forward one set of headings (κεφάλαια) but to work towards your real object in the course of developing these. The speaker is, in a sense, pleading two cases at once: the one that he advances overtly and that determines his list of headings and the one that he is really trying to put over. However, the category also covers "multi-purpose" speeches, where it may not be easy to identify one dominant purpose. Of his examples, the clearest (302–5) is the analysis of Demosthenes' earliest known public speech, *On the Symmories*, of 354 B.C.

The situation, says our analyst, is that the Athenians, overly influenced by patriotic oratory, are eager to go to war against the Persian king. Demosthenes, we are told, has two objects: to stop them from doing this and to get them to fight Philip. His σχῆμα—"strategy" we should call it—is to say that they ought not to fight the Persians *yet;* thereby he falls in with their mood, but tells them that they must first make adequate preparations. He knows in his heart that the delay will cool their passions. The strategy, says our author, is the same as that of Archidamus in Thucydides (1.80ff.), where he urges negotiations with Athens but also preparations for possible war. This is an interesting but inexact comparison. We have to remember that there is no allusion to Philip, however indirect, either in the speech *On the Symmories* or in Demosthenes' next public speech, *For the Megalopolitans*, delivered the next year. However, Philip had been at war with Athens since 357, when Pydna and Potidaea fell to him, and in his speech *Against Leptines*, which is not a deliberative speech, Demosthenes (61) incidentally treats Philip and his newly conquered cities as hostile. Our author is presumably basing what he says on his, or his sources', general understanding of Demosthenes' hostility to Philip. This, not the speech *On the Symmories* itself, is what gives him the context that enables him to identify the σχῆμα.

The third category is of speeches that "say one thing and intend the opposite." According to A, the technique of this consists of being seen to damage one's supposed case by making the arguments for it manifestly weaker than those that one attributes to the imagined adversary and of adducing considerations that the adversary can turn to his own advantage. The classic example, which both A and B use, is Agamemnon's "testing" of the Greeks in the second book of the *Iliad.* I translate part of A's analysis (319, 24–322, 13):

An example of this type of speech is provided by Homer's Agamemnon, who teaches us the type in the testing of the Greeks. First, he puts forward his subject (*ὑπόθεσιν*):

> Come, let us see how we can arm
> Achaea's sons: I'll try them first with words
> (for that is right) and order them to flee,
> manning the ships; then you must hold them back,
> speaking a word here and another there. [72–75]

He applies his technique in his address to the people (*δημηγορία*) by putting forward weak propositions, thereby giving a handle for refutation to anyone who wishes to oppose him and saying ambivalent things (*στρεφόμενα*). Let us look at the actual lines:

> Great Zeus, the son of Kronos, bound me fast
> in a heavy doom, hard-hearted as he is,
> who promised and made certain by his nod
> that I should sack this well-walled Ilion
> and then go home. [111–13]

One could answer Agamemnon here by saying that if Zeus promised and made certain by his nod, which is the signal that he is telling the truth [A here quotes *Iliad* 1.524–27], how can you think it proper to sail away?

Agamemnon goes on:

> And now he has plotted deep deceit against me,
> and sends me back to Argos in disgrace (*δυσκλέα*),
> for I have lost so great a people. [113–15]

Here again he gives an opening for a riposte (*ἀντιλαβή*) by the word *disgrace*, for one might properly object that it is wrong to depart in a shameful way (*αἰσχρῶς*). Next:

> That, I suppose (*που*), is what all-powerful
> Zeus most wants. [116]

Observe the word *που*: This is a conjecture (*στοχασμός*), not a definite assertion. Next:

> [Zeus] who has cast down the crowns
> of many cities and will do so again. [117–18]

One could answer: If he cast down many cities and will cast down others, we ought to trust Zeus and stay and wait.

What follows is strikingly ambivalent (στρεφόμενον) and is what the opponent uses:

> Shameful will it be for future men to learn
> that such a brave and great Achaean host
> fought a useless war in vain and to no end. [119–21]

Shame is the point made by the advocate of staying, and, indeed, Odysseus makes it [298].

The conclusion of the speech shows particularly clearly that it is the speech of one who desires the opposite of what he says:

> Come, let us all agree with this, and flee,
> manning the ships, to our dear native land. [139–40]

The shame implicit in the word *flee* does more to restrain the Greeks than to send them on their way. This is the word that Hera uses to Athena [2.159], Athena to Odysseus [2.175], Odysseus to the people,[6] and Agamemnon to Achilles [1.173]. Homer generally uses the word *flight* (φυγή) to apply to shame and cowardice. This then is how he puts forward propositions that give a cue (ἐνδόσιμα) and are easy to refute (εὐδιάλυτα) and says things that are ambivalent and contrary [sc. to his professed case].

It remains for us to explain his technique of being undetected. What is this technique? The addition of emotion. Agamemnon speaks with apparent indignation and begins by blaming Zeus and blaspheming against God. By this means, he deceives his hearers, because they think that his lack of self-control means that he is not speaking in precise terms, but saying all this in a passion. This is the method by which this figure (σχηματισμός) may even escape the notice of the person who uses it (σχηματίζοντα).

The point about emotion reminds us of a common observation in microschematics; it is the theme developed by Longinus (17) in his argument that the way to avoid being suspected of trickery is to let grandeur and emotion dazzle the audience. The whole discussion, moreover, seems to rest heavily on individual words: που, δυσκλέα, φυγή. As an interpretative technique, it does not go very deep. Like so much ancient literary comment, it seems to latch on to minute and apparently insignificant points. But, of course, it is not primarily intended as interpretation, but as

[6] In 2.298, however, Odysseus only says that it is shameful to "wait a long time and then go home empty-handed."

advice. The display of the grammarian's learning is meant to serve the purpose of the *rhetor.* But advice for what? The heavy and continuous irony of appearing to advocate the opposite of what you want seems a risky technique for real life. The audience may well not catch the give-away *που*, though no doubt gesture and intonation would help. It is a difficult tightrope to walk. In fact, of course, the didactic thrust, as in most discussions of ἐσχηματισμένοι λόγοι, is directed towards declamation, where you do invent your opponent, and so can play the trick of giving him the better cause. This point is indeed made by B (329, 14–24), but in terms that distance him from the declaimers:

> This, at least, declaimers (οἱ μελετῶντες) also know. When a man comes before the Council asking for death, he never wants to die, but wants the opposite of what he says.[7] Similarly [in real life?], people who reject their friends' presents, though they really want to accept them, are trying to effect the opposite of what they say. We must, therefore, explain how Agamemnon says things easily refuted or ambivalent and, most important, how he did so without being detected, for, if the technique is disclosed, the hearer will produce *his* techniques and figures to oppose it, pretending to agree and grant the point.

There is some obscurity about the "fourth type" of σχῆμα. A (297, 18–23) has three variations that, he says, "depend" on the three main types. They are (i) "to appear to be saying the same as the previous speaker, but, in fact, to manage (διοικεῖσθαι) another subject," (ii) "to appear to oppose in words, but, in fact, to support, the figure preparing the way for the practical function (χρεία)," and (iii) "to put off speaking openly about something, on the plea of a discussion at another time." All of these are subsequently (312–19) illustrated out of Homer.

B (331–36) singles out one of these, the first, and calls it the "deepest" of all these figurative approaches. He describes it as using the arguments of a previous speaker and building on them to advance a different case. His example, which A also uses, is from the second book of the *Iliad,* where Odysseus persuades the Greeks to stay and not go home, and Nestor follows this up, apparently saying the same things, but, in fact, building on Odysseus' successful speech to make the further demand that they must prepare for battle.

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[7] This is the usual view of προσαγγελία cases. But note Quintilian's scepticism (*Inst.* 9.2.86): People forget all the real examples of voluntary death.

Rather than treat these illustrative examples systematically, I should like, in conclusion, to look at this material from a slightly different point of view and consider the range of literature on which A and B drew and what this tells us about the tastes and reading habits that they wished to implant in their pupils. Homer and Demosthenes, of course, figure largely; but A (298, 2–5) promises also Thucydides, Xenophon, Plato, Euripides, comedy, and all the three branches of rhetoric (deliberative, forensic, and epideictic).

The *rhetores*' problem was, naturally, that it is not always easy to recognize ἐσχηματισμένα, and one always needs a context. It was natural, therefore, that they should look out for clues, indications that the author wanted us to see what his σχῆμα was. It seems to be accepted that the classical author actually wants to teach technique; this perception is, perhaps, a retrojection of the *rhetores*' own habit, familiar in Dionysius and Longinus, of illustrating their points by examples hidden in the text. For example, A (298, 16–299, 10) discusses a passage of the speech *On the Crown* (178) in which Demosthenes advises on the approach that the ambassadors should make to Thebes: They are to promise help on the ground that Athens is in a better state than Thebes and has a clearer view of the future, "so that, if they accept this and consent, we shall both have managed (ὦμεν διῳκημένοι) what we want and done this in a fashion (σχῆμα) worthy of the city." A's comment is: "You see the fact of management (διοίκησις) and the name attached to the fact, namely σχῆμα." B, at 341, 20, similarly alleges that Homer himself, out of the goodness of his heart (ὑπὸ φιλανθρωπίας) explains the "figure" used by Odysseus in *Iliad* 2.206: "and so he went through the army κοιρανέων." The word κοιρανέων, says B, does not mean, as we should expect, "as a commander," but "with commanding verbal strategy" (στρατήγημα τῶν λόγων). He has been trying to tell us that Odysseus' words to the common people, especially 204, "many commanders are not a good thing" (οὐκ ἀγαθὸν πολυκοιρανίη), are really directed to the rulers (βασιλεῖς), and his words to the rulers (193–94) are really directed to the people. It is, therefore, he argues, unfair to accuse Odysseus of harshness towards the δῆμος, because his harsh words were not meant for them. This is a contribution to what seems to have been a long debate on the interpretation of these scenes. We find it in Xenophon (*Mem.* 1.2.58), we hear of it in Polycrates and Lysias,[8] and it turns up in Libanius' *Apology of Socrates* (92–93). Its presence here shows the inter-

[8] See G. Giannantoni, ed., *Socratis et Socraticorum Reliquiae* (Naples, 1990), 1.C.137.

est of our *rhetor* in a wider field than mere rhetoric; he is not unwilling to trespass on philosophers' concerns.

A's promise (298, 2–5) does not quite correspond with what we find. Drama has no place. Both A and B (308–9, 345–46) have a discussion of Euripides' *Melanippe*, in which they distinguish the poet's σχῆμα from that of his principal character. Euripides wants to acknowledge his debt to Anaxagoras; Melanippe philosophizes to save her children. The same famous speech and the tag "nor mine the story" (fr. 484 N) illustrate both. B adds an instance from *Aeolus* (but no quotation), alleging that Macareus' counsel to his father to permit marriages between brother and sister is, in fact, a plea for himself. (We might reasonably compare declamation practice, as seen, for instance, in Libanius' *Declamations* 39, where a proposal of law has a personal application. This speech is a good instance of the kind of σχῆμα that our authors are discussing.)

Comedy—Cratinus, Aristophanes, Eupolis—gets only a brief general notice in A: "It philosophizes behind a façade of the ridiculous" (309, 19–22). Both A and B use Plato and Xenophon. B also has Isocrates and two works of Xenophon, the *Memorabilia* and the *Agesilaos*, not used by A. A has Thucydides' funeral speech. I select four examples, in two of which the analysis is explicitly combined with some literary history—either an assertion of dependence, or just an assertion of similarity. Such things are characteristic of ancient scholarship. A type of example in a rhetorical text is, once again, Longinus' discussion of the Marathon oath in Demosthenes (*On the Crown* 208): The "seed" (σπέρμα) of it, he tells us, is in Eupolis.

First, A (305–6) and B (347) both discuss the relation between Plato's *Apology* and the speech *On the Crown*. A asserts imitation (ζηλώσας); B does not. The multi-purpose *Apology* is (i) a defense of Socrates, (ii) an accusation against the Athenians, the bitterness of which is kept well hidden, (iii) an encomium of Socrates, covert because of the necessities of the defense, and (iv) a deliberative speech, as a protreptic to philosophy. These purposes are then seen to be paralleled (or imitated) in the speech *On the Crown:* Demosthenes (i) defends Ctesiphon and his own policy, (ii) accuses those responsible for the disasters that have occurred, (iii) praises himself, and (iv) counsels his fellow citizens on the principles of political life.

Secondly, A (309–10) treats *Cyropaedia* 2.1.9–19 as an instance of "saying one thing and effecting another." The passage is the account of how Cyrus managed to persuade both the peers (ὁμότιμοι) and the ordinary Persians that the latter should have the same arms and equipment as the peers and be employed with them in battle, instead of serving in the ancil-

lary arms as archers and slingers. "Our fine Xenophon," says A (309, 23–310, 7), "wishing to give the ordinary people among the Persians the same equipment as the peers, and also to have a general competition in bravery for the best soldiers, talks to the peers, in Cyrus' speech, as though doing them a favor, and to the ordinary people as one who takes thought for them, using a figure (σχηματίζει [Schott, Radermacher]) in each speech. I pass this over." It is a great pity he does pass it over, because it is not easy to read the passage in Xenophon as, apparently, our author would wish. Cyrus' appeal to the ὁμότιμοι is to their duty, and it is hard to see what he says is "doing them a favor." It is, he argues, the officers' part to "sharpen" the courage of others. One of the officers objects that it is Cyrus' job to do this, but accepts that it is also the job of the ὁμότιμοι. In his speech to the common people, however, Cyrus does, indeed, "take care for them": He assures them of the necessities of life, excuses their previous inferiority on the ground that they have never had time to learn skills of arms, and offers them the choice of accepting or remaining as mercenaries in the ancillary units. Xenophon comments that the ordinary people concluded that they would deserve to starve if they refused so fair an offer. A's exposition of these σχήματα, as he perceived them, would have been welcome. One may suspect that he had a Homeric parallel in mind here also, perhaps the Odysseus scene in the second book of the *Iliad* again, and it would have been good to see how he worked it out.

Thirdly, in the immediately following treatment of *Anabasis* 1.3.3–6 (310, 7–311, 12), Xenophon is explicitly said to be imitating Homer:

> The soldiers suspect that the expedition is against the King and are unwilling to follow Cyrus. Clearchus then addresses them, promising to go wherever they go, but establishing the point that it is essential to stay as they are, imitating (μιμούμενος) Homer's Phoenix. For Phoenix, in the Litai [i.e., *Iliad* 9.434–523] puts forward the substance (ὑπόθεσις) of Achilles' speech and says that he can not stay if Achilles goes, but will follow him in all circumstances. But by expounding the reasons that make it impossible for him to leave Achilles, he establishes the point that Achilles must stay. On the face of it, he is explaining why he himself can not stay; in fact, he is asking for a return of the favors that he gave Achilles by bringing him up and educating him, while he is also rendering a service to Agamemnon. Achilles himself shows that this was the purpose behind the figure of speech. It is Homer's habit, and also that of everyone else who has learned from Homer how to handle this mode (εἶδος),

to expose the technique of one speaker by the answering speech of another. Thus, Achilles says:

> Try not to break my heart with grief and sorrow,
> doing your service to the son of Atreus. [612–13]

You see here how the pupil [Achilles] reveals his teacher's [Phoenix] technique, showing that he understands that everything is said for Agamemnon's sake and to soften Achilles' anger. Then, when Phoenix has enumerated the favors, Achilles, in order not to seem ungrateful, speaking obliquely (πλαγίως) himself, frees himself from blame:

> Be king with equal power to mine, and take
> half share of honor with me. [616]

Homer here has appeared as a teacher. In my last example, the motifs of "classic as teacher" and "classic as imitator" are combined. It is B's example (331–36) of his fourth and "deepest" σχῆμα, namely the use of a previous speaker's words to advance a new position. This involves an elaborate analysis of the speeches of Odysseus and Nestor in the second book of the *Iliad* and of Agamemnon's way of closing the debate (2.375–80). Having finished with this, B continues (335, 4–336, 1):

> And who imitated this technique and explained it? Plato. Alcibiades delivers an encomium of Socrates in the *Symposium* [222b]. At the conclusion of this encomium, Alcibiades says to Agathon, "Be careful, Agathon; you don't want to suffer what many do. Socrates here is pretending to be a lover, but then he appears as the one who is loved. Don't let what has happened to everyone else happen to you." Alcibiades, of course, loved Agathon and did not want him to be loved by anyone else, so at the end he throws in this piece of advice to Agathon in the context of the encomium. Socrates himself explains the technique [222c–d, but not verbatim]: "I think that you're sober, Alcibiades," he says (Alcibiades appeared to be drunk) "because you wouldn't have given us all this elaborate satyric drama if you hadn't been sober. You've been saying all this to put me and Agathon at odds, so that you can have a monopoly of my love. You put it in, indeed, as a matter of no importance, at the end—as though it wasn't the goal of your speech all along. Well, you didn't get away with it. The satyric drama is revealed."

And that is how the technique is executed and how it is taught.

These samples of A and B have, I hope, shown how some teachers of rhetoric read the classics. *Σχήματα*, in the sense in which the word is used in these treatises, were very important to them. The indirect approach is, in fact, a defining characteristic of rhetorical skills. "Suppose," says Dio Chrysostom (43.6), "that someone were to say something unworthy about me, either in straight terms (*ἄντικρυς*), or—in order to be thought a *rhetor*—with a *σχῆμα*, though by no means in decent shape (*εὐσχήμων*) himself. . . ." Any fool can say things *ἄντικρυς*.

What makes A and B more interesting than most of their kind is the richness and detail of their illustrations. They may even seem to give countenance to the many attempts that modern scholarship makes to uncover hidden agenda in so much ancient writing. More modestly, they may encourage us at least to identify examples of multi-purpose or schematized speeches of their own age. Apuleius' *Apology* is clearly multi-purpose, as much as Plato's was: defense, accusation, praise of and protreptic to Platonic philosophy, *epideixis* of learning, showing what it is to be an educated man. *On Sublimity* surely illustrates the procedure of using one set of *κεφάλαια* to promote an object that they do not reveal; the main thrust of the argument—the moral dimension, the concept of grandeur—is managed or contrived through the medium of the list of headings and appears most plainly in the digression. Dio's *Troica*, in which he attacks the reliability of Homer in a city whose fame rested on Homer, is a mysterious exercise. Perhaps it "seeks an opposite theme to that which it professes." There are certainly signs of what look like deliberately weak arguments: In 37 Dio puts all his own argument into the mouth of the Egyptian. "Schematism" is doubtless well diffused in sophistic literature; let us each seek it where we can.

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GENERAL INDEX

Aeschines 43, 45
Alexander Numeniu 157–58
Amnesty 20–23
Antiphon 12, 15
Apuleius, *Apology* 168
Archinus 20, 23
Aristagoras 64, 68, 69–71
Artabanus 57–59, 68, 69, 70, 71
Astyages 67–68

Busiris
  In painting: Busiris Painter 77–78; Epiktetos Vase 80; Pan Painter 78; Swing Painter 77, 79; Troilos Painter 80.
  In literature: Callimachus 90; Cratinus 81; Euripides 81, 90; Hesiod 76; Old and Middle Comedy 80–81, 82, 84, 85–86; Pherecydes 81, 82; Polycrates 73.

Caesar
  Appearance 98–99; death 108–9; place in Roman history 107–8; political ideas 100–101; sexual inclinations 99; speeches 102–3, 104–7; style 101–2, 103–4; wives and lovers 97–98
Candaules 62, 65–66, 67
Cicero
  De oratore 124; conception of ideal orator 124; in Tacitus' *Dialogus* 140, 142, 144, 145, 146, 148, 149; influence on Tacitus' *Dialogus* 138; *Pro Milone:* and Antonius' speech for Norbanus 128–31; structure 125- 26; use of *ethos* and *pathos* 126–27
Cleomenes 69–71
Cleon 13
Clodius 111, 113, 115, 116, 119, 124, 130
Croesus 65–66

Darius 67
Deioces 65
Damaratus 64

Demosthenes
  On the Crown and Plato's *Apology of Socrates* 165; *On the Symmories* 160
Dio, *Troica* 168
Diodotus 13

Epideictic composition
  In Aristotle 74, 87; in Isocrates ("hypodeictic") 86–90; in Menander Rhetor 74
Erasmus 90
Estoppel 28, 36, 43

Figured speeches, types 156–63

Gobryas 67
Gorgo 64
Gyges 65–66

Harpagus 67–68
Hermagoras 18, 19
Herakles 76–78, 80, 82–84
Histaeus 64
Horatius 117–18

Idanthyrsus 67

Kennedy, George 18, 55–56, 112–13, 117, 120, 156

lex Plautia de vi 114–16
  and *stasis* theory 115–17
Longinus, *On Sublimity* 165, 168

Mardonius 97–98
Μετάληψις 18–19; in Augustine, 36–37; in Cicero, 32–34; in Hermogenes, 37–39; in Martianus Capella, 34–35; in Quintilian, 35–36; in the *Rhetorica ad Herennium*, 34; in Sopater, 40–44; in Syrianus, 44–47
Milo 113, 114, 115, 116–17, 118–19, 124–25, 130

Norbanus 128–29

Periander 63
Pericles 12–13, 89
Philip of Macedon 87–88
Plato 14
Pliny the Younger 148, 150, 154
Pollux 31, 33
Pompey 125

Socrates 4–5, 90
Sosicles 63, 68–69
Speeches in Herodotus and Thucydides 55–56
Sulpicius 128, 129

Tacitus, *Dialogus*
Aper's first speech 139–42; Aper's second speech 144–46; characterization in 138–39; Cicero's influence on 138; Cicero, discussion of 140, 142, 144, 145, 146, 148, 149; date 137; Eprius Marcellus and Vibius Crispus 139–40, 144, 150, 152, 153; Messalla's first speech 146; Messalla's second speech 147- 49; Maternus' first speech 142–44, 151, 152; Maternus' second speech 149–53; Quintilian and Messalla's second speech 147–48
Theon 90
Thrasybulus 63–64, 66
Timarchus 43, 45

Xerxes 56–59

INDEX LOCORUM

Alexander Numeniu
On Figures of Speech and Thought
11, 31–12, 1 158
12, 7–14 158
12, 15–26 158

Andocides
1.87–88 24–25

Apollodorus
Library 2.5.11 73

Appian
Bellum Civile 2.92–94 106

Aristotle
Rhetoric 3.2.4 7

Augustine
De rhetorica 10 36–37

Bobbio Scholiast 125 116–17

Caesar
De bello Gallico 40 102

Cassius Dio
21.26–35 105

Cicero
Ad Atticum 13.46.1 107
Brutus 252–54 103–4; 261 104; 262 102
De inventione 1.25 8; 1.11.16 32–33; 2.80–81 118
De oratore 2. 64 102; 2.177 9; 2.197–203 128–31, 132–33; 2.310–12 126–27
De optimo genere oratorum 12 15
Philippic 1.1 28–29
Pro Milone 100 132–33
Pro Sestio 92 119

Demosthenes
Against Meidias 141–42 6
For Phormio 28
On the Crown 178 164; 208 159, 165; 302 12
On the Peace 11 12
Proemia, 14–15

Dio Chrysostom
43.6 168

Epicharmus
Fragment 80–81

Euripides
Melanippe, fr. 484 165

Hermogenes
On Issues 42.5–43.7 37–38

Herodotus
1.8 62
1.21–22 66
1.95 71
1.99 65
1.113–24 68
2.45 81
3.46 60–61, 62–63
4.127–31 67
5.35 64
5.36 68
5.50 70
5.52–54 70–71
5.92.z.2-h.1 63
5.97 70
7.8–11 56–59
7.103 59
7.239 64
8.111 61–62

Hesiod
Fragment 222 76

Homer
Iliad
2.72–75, 111–40 161–63
2.193–94, 204–6 164, 166
2.375–80 167

9.434–523 166
9.612–16 167
15.168–204 159

Hyperides
Epitaphios 2 10–11

Isocrates
Against Callimachus 23–24, 26–27
Antidosis 178–79 10
Busiris 44 86
Panathenaicus 36 11
Panegyricus 3–4 11
Philip 109–13 87

Libanius
Declamations 165
Hyp. Dem. 36.3 & 37.6–7 42

Lysias
Epitaphios 1 11–12

Martianus Capella
5.444 & 453 34–35

Plato
Menexenus 234b-235c 90
Phaedrus 257e-258b 14
Symposium 222b-d 167

Plutarch
Alexander and Caesar, preface 97
Brutus 5 98, 109; 17 109
Caesar 2 103; 4 99; 7 101; 22 101; 57 108

Quintilian
Institutio Oratoria
2.4.24 139
2.10.11 10
3.66–79 35–36
4.1.8–9 5
4.1.11 5
4.1.54 8
4.1.56 7
4.1.60 7–8
4.5.4 9
8.3.2 15
8.3.5–6 15
9.2.72 9
9.3.102 9
10.1.114 102, 104
11.2.47 9

Rhetorica ad Herennium
1.11 8
1.17 8
2.47 9

Sallust
Bellum Catilinae 54 100–101

Sopater
RG 5.109.27–110.15 40–41
RG 5.110.24–111.1 41
RG 5.191.5–18 42

Suetonius
Caesar
52 99
59 107
65 103
66 107
77 107
82 108

Syrianus
2.55.5–8 44
2.152.19–153.3 44
2.153.7–10 44
2.157.4–9 45
2.157.9–17 45
2.157.18–158.12 45
2.159.14–160.6 46–47

Theon
Progymnasmata 29 90

Thucydides
2.60.5 12–13
3.42.4–6 13
3.38.7 13
8.68.1 12

Xenophon
Anabasis 1.3.3–6 166
Cyropaideia 2.1.9–19 165–66